



USN/USMC Commander's Quick Reference Handbook for Legal Issues



APRIL 2012



Report Documentation Page

*Form Approved
OMB No. 0704-0188*

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE APR 2012	2. REPORT TYPE	3. DATES COVERED 00-00-2012 to 00-00-2012		
4. TITLE AND SUBTITLE USN/USMC Commander's Quick Reference Handbook for Legal Issues			5a. CONTRACT NUMBER	
			5b. GRANT NUMBER	
			5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)			5d. PROJECT NUMBER	
			5e. TASK NUMBER	
			5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Justice School,360 Elliot Street ,Newport ,RI,02840			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSOR/MONITOR'S ACRONYM(S)	
			11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited				
13. SUPPLEMENTARY NOTES				
14. ABSTRACT				
15. SUBJECT TERMS				
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 148
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified		
19a. NAME OF RESPONSIBLE PERSON				

TABLE OF CONTENTS

Section I: MILITARY JUSTICE.....	1
NCIS REPORTING & MILITARY JUSTICE INVESTIGATIONS	1
SUSPECTS – QUESTIONING/INTERROGATION/ARTICLE 31(b)	2
SEARCH SEIZURE	4
COURTS-MARTIAL: TYPES & CONVENING.....	6
COURTS-MARTIAL: BASICS.....	8
COURTS-MARTIAL: PRETRIAL RESTRAINT (PTR)	10
COURTS-MARTIAL: PRETRIAL AGREEMENTS	12
COURTS-MARTIAL: POST-TRIAL REVIEW	14
VICTIM/WITNESS ISSUES	17
Section II: OTHER ADMINISTRATIVE & DISCIPLINARY OPTIONS.....	20
NONPUNITIVE MEASURES.....	21
NJP JURISDICTION.....	23
NJP – PRE-MAST & MAST PROCEEDINGS	25
NJP – CLEMENCY & CORRECTIVE ACTION	27
NJP – APPEALS.....	29
Section III: JAGMAN INVESTIGATIONS	31
DEATH INVESTIGATIONS	34
REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL CLAIMS.....	36
CLAIMS	38
Section IV: ADMINISTRATIVE SEPARATIONS	39
ENLISTED ADMINISTRATIVE SEPARATIONS	44
OFFICER MISCONDUCT AND SEPARATIONS	46
DETACHMENT FOR CAUSE.....	48
Section V: PERSONNEL ISSUES.....	49
HIV ISSUES.....	53
MENTAL HEALTH EVALUATIONS (MHEs)	54

Section VI: SEXUAL HARASSMENT, FRATERNIZATION & HAZING	56
SEXUAL HARASSMENT INCIDENT	56
FRATERNIZATION INCIDENT	58
HAZING PREVENTION/INCIDENT.....	59
Section VII: FREEDOM OF EXPRESSION AND GRIEVANCE PROCEDURES.....	61
FREEDOM OF EXPRESSION	61
REQUESTS MAST/REDRESS OF WRONGS/ART. 138 UCMJ	63
UCMJ ARTICLE 138 COMPLAINTS: See JAGMAN, Chapter III	64
HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT	65
CONGRESSIONAL INQUIRIES.....	66
FREEDOM OF INFORMATION ACT (FOIA).....	67
PRIVACY ACT.....	69
Section VIII: INTERACTIONS WITH CIVILIANS	71
JURY DUTY.....	71
LAW ENFORCEMENT – CIVILIAN JURISDICTION.....	72
LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES	74
REPOSSESSION OF PERSONAL PROPERTY	76
SERVICE OF PROCESS/SUBPOENAS.....	77
Section IX: OUTSIDE CONUS	79
CUSTOMS.....	79
FOREIGN CLAIMS.....	80
FOREIGN CRIMINAL JURISDICTION/SOFA	81
LIBERTY RISK	82
MARRIAGES – OVERSEAS	83
Section X: LEGAL ASSISTANCE	84
PREDEPLOYMENT LEGAL READINESS	87
SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)	90
DEPENDENT SUPPORT	93
PATERNITY COMPLAINTS	95
INDEBTEDNESS COMPLAINTS	96

Section XI: FAMILY RELATIONSHIP ISSUES	98
DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS	98
Section XII: ETHICS	101
GUIDELINES FOR ETHICAL CONDUCT	101
COMMERCIAL DEALINGS BETWEEN MEMBERS.....	103
CONFLICTS OF INTEREST	104
FUNDRAISING	106
BIRTHDAY BALL FUNDRAISING.....	109
GAMBLING.....	110
GIFTS BETWEEN EMPLOYEES	111
GIFTS FROM OUTSIDE SOURCES.....	112
GOVERNMENT PROPERTY	114
OUTSIDE EMPLOYMENT	115
POLITICAL ACTIVITIES – MILITARY ACTIVE DUTY	116
PRIVATE ORGANIZATIONS AND FAMILY READINESS GROUPS.....	117
TRAVEL BENEFITS	119
COMMAND COINS / RECOGNITION & RETENTION ITEMS	120
Section XIII: APPENDIX	121
NONJUDICIAL PUNISHMENT CHART	A
CO SEARCH & SEIZURE CHECKLIST	B
MAXIMUM PUNISHMENT CHART	C
SEXUAL HARASSMENT INVESTIGATION CHART	D
FRATERNIZATION INVESTIGATIONS CHART.....	E
CHECKLIST FOR GCM REVIEW OF ARTICLE 138 COMPLAINTS	F
EXECUTIVE OFFICER'S INQUIRY (XOI)	G
USE OF DRUG URINALYSIS RESULTS	H
ADMINISTRATIVE SEPARATIONS.....	I
OVERVIEW OF MILITARY JUSTICE SYSTEM.....	J
RELATIONS WITH CIVIL AUTHORITIES FLOW CHART.....	K

Section I: MILITARY JUSTICE

NCIS REPORTING & MILITARY JUSTICE INVESTIGATIONS

REFERENCES: (a) [Manual for Courts-Martial](#), RCM 303
(b) [JAGMAN](#) (Chapter 2)
(c) [SECNAVINST 5430.107](#) (series)
(d) [SECNAVINST 1752.4A](#) (series)

COMMAND INQUIRY: Suspected offenses may come to command attention in a variety of ways (e.g. shore patrol, civilian law enforcement, phone call). The CO must conduct some inquiry into reported offenses triable by court-martial per reference (a). The degree of the inquiry will depend on the nature, validity, and seriousness of complaint. See reference (b).

MANDATORY REFERRAL TO NCIS: Reference (c) mandates that certain incidents be referred to NCIS whether occurring **on or off** base and **regardless of civilian investigative involvement**. These incidents are:

- Actual, suspected, or alleged major criminal offenses (punishable under the UCMJ by more than 1 year confinement);
- Non-combat deaths when the cause of death is not medically attributable to disease or natural causes;
- Fires or explosions of unknown origin affecting Department of the Navy (DON) property or property under DON control;
- Theft or loss of ordnance or controlled substances;
- Disappearance of a command member;
- All instances of suspected fraud against the government within the DON (e.g., theft of government property, bribery, false claims for pay);
- Actual or suspected acts of espionage, terrorism, sabotage, or assassination and actual, suspected, or attempted defection by DON personnel;
- Certain internal security incidents, such as loss, compromise, or suspected compromise of classified information;
- National security cases; and
- Sexual assaults [see reference (d)].

WHEN NCIS DECLINES AN INVESTIGATION: NCIS may, at its discretion, decline any investigation, but shall expeditiously inform the affected command. A command may then pursue a command investigation per reference (b) or request assistance from the Security Department.

SUSPECTS—QUESTIONING/INTERROGATION/ARTICLE 31(b)

REFERENCES: (a) [Manual for Courts-Martial](#), MRE 301-305
(b) [UCMJ, Article 31\(b\)](#)
(c) [MILPERSMAN 1620-010](#)
(d) [JAGMAN Appendix A-1-e](#)
(e) [JAGMAN Appendix A-1-m](#)

MAJOR CRIMINAL OFFENSES: DO NOT allow anyone from your command to interrogate the member before discussing the case with NCIS.

ALWAYS READ RIGHTS when (1) you suspect a member of committing an offense and (2) you are going to ask the member a question relating to the offense (e.g., asking questions or making statements that are likely to evoke an incriminating response).

WHICH RIGHTS EXACTLY?

- A service member is entitled to be informed of Article 31(b) rights when you suspect the member has violated the UCMJ and are going to question that member about the offense.
- Use the rights warning form [see *reference (e)*]. Article 31(b) are reflected on the rights warning form and should always be read before any interrogation. Do not ask the suspect any questions unless *both* the right to remain silent and the right to a lawyer are waived.
- Waiver of rights must be made freely, knowingly, voluntarily, and intelligently. Make sure servicemember understands his/her rights and the consequences of his/her waiver.
- If the servicemember wants to remain silent or asks for a lawyer, you MUST NOT ask any more questions.

PRIOR QUESTIONING WITHOUT RIGHTS WARNING: Provide "cleansing warning" if someone has previously questioned the member and did not provide Article 31(b) rights warnings. (1) Advise the member that the prior statement cannot be used against him/her and that (2) even though he/she made the earlier statement, he/she can still choose to remain silent or request a lawyer. Then (3) fully advise the member of his/her rights using reference (e) and determine whether the member will waive his/her rights.

NEW OFFENSES: If during any conversation or questioning, you begin to suspect the member of a new or different offense, you must stop the questioning immediately and complete a new rights warning form with the new or different offense or offenses listed [see *reference (e)*].

ARTICLE 31(b) & NJP: At mast/office hours, only Article 31(b) is read. Sailors always have the right to remain silent but do not have a right to an attorney during Non-judicial Punishment (NJP). However, if it is reasonably foreseeable that an accused will make an admission or actually does make

an admission that warrants court-martial punishment, the CO should provide a full reading of Article 31(b) rights and waiver [see reference (e)]; to protect the admissibility of such confessions in court. That said, full rights warnings must be given at all other stages in the process (e.g., prior to any questioning by a supervisor, investigating officer, law enforcement officer, Chief's Discipline Review Board, or XO).

DRUNKEN SAILOR: A member must be in a condition to knowingly, intelligently, and voluntarily waive his/her rights. Don't try to interrogate a drunken sailor!

FALSE PROMISES OR THREATS: A confession must be voluntary. Don't use threats or false promises.

PROMISE OF LENIENCY: Only General Court-Martial Convening Authorities (GCMCA) (Flag officers) have the authority to grant immunity or leniency for testifying. Do not promise a member that you won't use what he says against him or that he won't be prosecuted.

SEARCH & SEIZURE

REFERENCES: (a) [Manual for Courts-Martial](#) MRE 311-316
(b) [MILPERSMAN 1620-010](#)
(c) [SECNAVINST 5430.107](#) (series)
(d) [JAGMAN Appendix A-I-n](#)
(e) [JAGMAN Appendix A-I-o](#)

CO/OIC AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED:

If CO/OIC was the victim of an offense or has become involved in the investigation, refer any search authorization request to a superior in the chain of command.

NON-DELEGABLE AUTHORITY: Only the CO/OIC can issue a search authorization. CO/OIC must personally make the probable cause determination; the CDO cannot act for CO/OIC.

MAJOR CRIMINAL OFFENSES: DO NOT conduct a search before referring the case to NCIS unless the search is necessary to protect life or property or to prevent the destruction of evidence.

SEARCH AUTHORIZATIONS MUST BE BASED ON PROBABLE CAUSE:

Probable cause is defined as:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched.
- The reasonable belief must be supported by a factual basis and information must be reliable and credible.

JURISDICTION:

- **PERSON (ON/OFF BASE):** With probable cause, a CO/OIC can authorize the search of persons under his command. Per reference (b), searches shall be, whenever possible, conducted by or in the presence of a service member of the same sex.
- **ON-BASE PROPERTY:** With probable cause, a CO/OIC can authorize the search or seizure of property under his immediate control. For areas not under the CO/OICs immediate control contact the installation commander.
- **OFF-BASE PROPERTY IN U.S.:** CO/OIC may not authorize a search of off-base property in the United States. The CO/OIC must work through NCIS to obtain civilian authority to conduct an off-base search.
- **OFF-BASE PROPERTY OUTSIDE U.S.:** CO/OIC with probable cause may authorize searches of military members' property. Note that some Status of Forces Agreements (SOFA's) limit or prohibit such off-base searches. Consult a Judge Advocate.

QUEST FOR EVIDENCE: If looking (searching) for evidence, DO NOT order or conduct a “health and readiness (or comfort) inspection” in the area where the evidence may be located.

- Courts may throw out evidence seized in a search disguised as an inspection. Factors the courts will consider to evaluate whether an inspection is really an illegal search are (1) if the inspection was not previously scheduled; and it followed the report of an offense; (2) if it targeted specific individuals; or (3) if it subjected specific individuals to a greater degree of scrutiny than others.

COMMON AREAS: May be searched anytime without a search authorization. Drug dogs may be used in passageways, workspaces, or common areas at any time. Drug dog alert from within a common area may establish probable cause to order a search of private property (but CO/OIC must still make the decision whether probable cause exists and whether to issue the authorization).

USE OF FORMS: Search authorization forms are found at JAGMAN A-1-n [reference (d)]. Anyone providing information to support the request to search should be sworn and under oath. [See APP. B: CO Search Authorization Checklist].

SPECIFICITY ON THE FORM: When authorizing a search, the CO/OIC must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found and any parts/pieces/components thereof.

ALWAYS ASK FOR CONSENT: Before actually conducting a search, the owner of the property should be asked for consent to search. Document consent in writing [see reference (e)]. Consent must be voluntarily obtained to be valid. Consent can be limited or withdrawn at any time. Limitation or withdrawal of consent cannot serve as a basis for probable cause.

COURTS-MARTIAL: TYPES & CONVENING

REFERENCES: (a) [Manual for Courts-Martial](#), RCM 501-504, 704, 1003, 1107, 1301-1306, Appendix C
(b) [UCMJ Art. 16, 22-25](#)
(c) [JAGMAN § 0120](#)

TYPES OF COURT-MARTIAL:

SUMMARY COURT-MARTIAL (SCM):

- Commanding Officers and OICs have authority to convene SCMs. The CO or OIC is referred to as the convening authority (CA).
- SCMs cannot try officers.
- All enlisted (sea and shore) have absolute right to refuse trial by SCM.
- CA appoints one officer as the SCM Officer who serves as the Military Judge (MJ), Trial Counsel (TC), Defense Counsel (DC) all rolled into one.
- The accused has no right to military counsel, but he may be represented by military counsel (at no expense to the accused) if one is detailed to the case. The accused also has the right to retain civilian counsel at his own expense if civilian representation will not unreasonably delay the proceedings.
- Punishment at SCM is limited. [See *Appendix C: Maximum Punishment Chart*].
- CA takes action on the findings & punishment awarded by the SCM Officer after 7 days.
- Rules of evidence apply = caution for **contested** SCM

SPECIAL COURT-MARTIAL (SPCM):

- Commanding Officers may convene.
- Full criminal trial for officer and enlisted. Consists of a MJ, at least 3 members, TC, DC (DC may include detailed counsel, Individual Military Counsel (IMC), and/or civilian counsel).
- See *reference (a), Appendix C for punishments*.
- CA must approve any pre-trial agreement.
- CA takes action on findings & sentence after clemency period has expired.

GENERAL COURT-MARTIAL (GCM):

- Article 32 investigation required. Any CA may order an Art 32.

- Only flag officers (and a very few specially designated COs) may convene a GCM. [See *reference* (c), § 0120].
- GCMs involve a military judge, at least 5 members, TC, and DC (DC may include detailed counsel, IMC, and/or civilian counsel).
- GCMs have authority to issue maximum punishment listed for any UCMJ offense.
- GCMCA approves pretrial agreement.
- GCMCA takes action on findings and sentence after clemency period has expired.

MECHANICS OF CONVENING COURTS-MARTIAL: Court created by Convening Order. Convening Order must be created prior to CA signing the charge sheet referring the charges to court-martial.

- Contents of Convening Order
 - Date
 - Convening Order number
 - Authority to convene (on letterhead)
 - Type of court
 - Names of members
 - Personal signature of CA
- Selection of Members:
 - "Members shall be persons who, in the opinion of the CA, are the best qualified by reason of their age, education, training, experience, length of service, and judicial temperament."
 - Members must be senior to the accused, unless unavoidable.
 - The accused is entitled to a fair and impartial panel. Members with personal knowledge of the charges will likely be disqualified.
 - Do not attempt to "stack" the jury.
 - Enlisted members are detailed only if an enlisted accused requests enlisted members. In such a case, absent military exigency, 1/3 of the final panel must be enlisted and the members must come from a unit other than the accused's unit.
- CO's Signature: Required on:
 - Convening Order.
 - Charge sheet referral block.

NOTE: Be absolutely sure both a Convening Order and the Preferral block of the charge sheet (block 11) have been signed and dated prior to referring charges to Court-Martial.

COURTS-MARTIAL: BASICS

REFERENCES: (a) [Manual for Courts-Martial](#), RCM 104, 504
(b) [UCMJ Arts 13, 22\(b\), 23\(b\), 37](#)
(c) [JAGMAN § 0129](#)

JUDICIOUS AND FAIR: Congress has entrusted Commanding Officers (COs) with responsibility to administer discipline. COs should be vigilant to ensure all actions are consistent with the UCMJ.

INFORMED DECISIONS: Ensure that independent investigations are convened to disclose reliable facts.

ACCUSER CONCEPT:

- For a SPCM or GCM the Convening Authority (CA) may not:
 - (1) Sign the accuser block on a charge sheet;
 - (2) Direct that someone else sign the accuser block on a charge sheet; or
 - (3) Have a personal interest in the case (e.g., as victim or witness).
- If such a situation exists, the CA must forward the case to a superior.

AREAS OF UNLAWFUL COMMAND INFLUENCE TO AVOID:

- **PUBLIC OPINIONS:** Do not express public opinions on innocence, or guilt or appropriate punishment for crimes in general or for individual accused.
- **UNLAWFUL INFLUENCE:** Do not order a subordinate commander to dispose of a case in a particular way. Each commander must be allowed to exercise independent judgment..
- **INFLEXIBLE POLICY:** Do not have an inflexible policy on disposition or punishment. Each case and each punishment must be decided based on its particular facts.
- **INFLUENCE REGARDING RESULT:** Do not censure, reprimand, or admonish the court or any member, military judge, or counsel with respect to findings or sentence adjudged.
- **INFLUENCE ON MEMBERS:** Do not select or remove court members in order to obtain a particular result.
- **INFLUENCE ON MILITARY JUDGE:** Do not attempt or even appear to put pressure on a military judge or court members to obtain a particular result.
- **INFLUENCE ON WITNESSES:** Witnesses may not be intimidated or discouraged from testifying. If a witness testifies (truthfully) on behalf of an accused, no retribution should be taken against him.

PRETRIAL PUNISHMENTS: Courts decide the punishment. An accused may not be punished before trial. Do not use pretrial restraint as a method to punish before conviction.

THE STANDARD: "Would the average American citizen lose faith in the military justice system or consider it unfair?" Ensure that an accused member receives all the protection provided under the UCMJ.

Reserve Note: The guidance provided above also applies to Reservists. However, a Reservist can be brought to a Court-Martial only if that Reservist is first recalled to Active Duty. The order recalling a Reservist to Active Duty to stand court-martial must be issued by a GCMCA.

COURTS-MARTIAL: PRETRIAL RESTRAINT

REFERENCES: (a) [Manual for Courts-Martial](#), RCM 304, 305
(b) [UCMJ Arts 10, 13](#)
(c) [JAGMAN 0127](#)

4 TYPES OF PRE-TRIAL RESTRAINTS (PTR) (from least to most severe):

- Conditions on liberty (e.g. orders to report periodically to specified officials; orders not to go to certain places or to associate with certain people such as the victim)
- Restriction in lieu of arrest
- Arrest
- Pretrial Confinement (PTC)

AUTHORITY TO ORDER PTR:

- **WHO:**
 - Only the CO may order **PTR** of an officer and/or a civilian.
 - Any commissioned officer may order **PTR** of an enlisted person. CO may delegate the authority to order pretrial restraint of CO's own enlisted persons to warrant, petty, and noncommissioned officers.
- **WHEN:**
 - PTR is appropriate when there is a reasonable belief that:
 - A court-martial level offense has been committed;
 - The restraint ordered is required by the circumstances;
 - The person to be restrained committed it; and
 - Additionally, for instances where pre-trial confinement (PTC) has been ordered, the commander shall direct the prisoner's release from PTC unless the commander also believes upon probable cause that:
 - The prisoner will not appear at trial; or
 - The prisoner will engage in future serious misconduct; and
 - Less severe forms of restraint are inadequate.
 - PTR decisions must be made on a case-by-case basis. The least severe form of PTR necessary under the circumstances should be used. PTR may not be used for offenses that will be handled at NJP. PTR is appropriate only when the command intends to try the accused by general or special court-martial.
- **PUNISHMENT BEFORE TRIAL IS PROHIBITED:** PTR may be used only to ensure presence of the accused at trial or to prevent future serious misconduct or both.
- **PTR (EXCLUDING CONDITIONS ON LIBERTY) STARTS SPEEDY TRIAL PROVISIONS:** Immediately notify the trial counsel (RLSO/LSSS) when a member is placed in PTR.
- **SUICIDAL OR INTOXICATED PRISONERS:** PTC is not appropriate and brigs will not accept such prisoners.

DOCUMENTING CO's APPROVAL OF PTC: When PTC is imposed, the CO must be notified and approve the PTC within 24 hours. A written memorandum ("48-hour letter") explaining why PTC is warranted must be prepared and signed by the CO within 48 hours and forwarded to the brig. If the CO is not "neutral and detached," an officer who is neutral and detached must make a probable-cause decision to continue PTC within 48 hours. If continued PTC is approved, the commander shall prepare a written memorandum that states the reasoning that continued restraint is warranted within 72 hours. This memo then will be forwarded to the 7 day reviewing officer.

COMMAND REPRESENTATIVE AT PTC HEARING: Within 7 days of confinement, an independent review officer (IRO) appointed by the area coordinator will conduct a hearing to review the reasons for continued confinement. The command shall send a representative to the hearing at the brig.

COMMAND VISITS: Prisoners in PTC should receive a weekly command visit.

Reserve Note: The guidance above applies to Reservists on Active Duty. A Reservist in a drilling status (Inactive Duty for Training (IDT)) should not be subjected to PTR until the Reservist is recalled to active duty to stand court-martial. A Reservist who has been involuntarily recalled to active duty to stand court-martial or NJP cannot be confined without permission from the Secretary of the Navy.

Reservists on active duty (AT or ADT) may be extended involuntarily beyond their normal release date as a result of apprehension, arrest, confinement, investigation, or filing of charges that may result in trial by court-martial and execution of any sentence of a court-martial.

Reservists on Inactive Duty Training (a normal reserve drill period) may be retained in that status by an officer empowered to convene courts-martial for not more than 2 full working days past the end of inactive duty training if: (a) there is probable cause to believe the accused committed an offense for which the maximum punishment authorized is confinement for more than 10 years or death; (b) approval, either oral or written, for holdover is obtained prior to expiration of inactive duty training from the officer empowered to convene a general court-martial in the chain of command of the accused and superior in grade to the requesting officer; and (c) immediate action is taken to order the member to active duty for trial by court-martial.

An accused Reservist held over may be placed in pretrial confinement as circumstances warrant. The order to active duty in such a case, however, must be approved by the Secretary, Under Secretary, or Assistant Secretary of the Navy, no later than 2 full working days past the end of inactive duty training. The request for an order to active duty must state the reasons why pretrial confinement is deemed necessary.

If necessary, the request to order an accused to active duty may be made directly by message or telephone.

PRETRIAL AGREEMENTS

REFERENCES: (a) [Manual for Courts-Martial](#) , RCM 705
(b) [JAGMAN 0137](#)

NEED FOR PRETRIAL AGREEMENTS (PTA): PTAs serve both the government and the accused. In exchange for a guilty plea and a limit on authorized punishment, the government is often spared the expense (both monetary and time) of lengthy trials (commands must fund a trial with Operation and Maintenance Funds and witnesses and members are often unavailable to the command for days).

CAs APPROVE ALL PTAs: PTAs are not entered into without the express consent of the Convening Authority (CA). Trial counsel (prosecutors) may make recommendations, but only CAs may approve the PTA.

SCOPE OF A PRETRIAL AGREEMENT (PTA):

Accused may agree to:

- Plead guilty.
- Waive an article 32 hearing.
- Waive members (i.e., to be tried by military judge alone).
- Waive government funding of sentencing witnesses.
- Be tried no later than a specific date.
- Stipulate to facts or testimony.
- Make restitution to a victim.
- Testify against others.
- Conform behavior to conditions of probation.
- Waive right to an administrative separation hearing after trial.
- A lower forum of court-martial.

CA may agree to:

- Protect accused on adjudged sentence provisions.
- Drop, reduce, or not proceed with certain charges.
- Protect accused from potential automatic sentence provisions.

NEGOTIATION PROCEDURES: Negotiations may originate with accused, Defense Counsel (DC), Trial Counsel (TC), Staff Judge Advocate (SJA), or CA. Proposals must be forwarded to the CA.

- Counteroffers are permissible.
- The final agreement must be in writing.
- The PTA must contain all aspects of agreement. Under-the-table agreements, or agreements not contained in the PTA, may render the written agreement invalid.
- Authority to sign may be delegated by CA (often to the TC).

WITHDRAWAL FROM THE PTA:

By the CA:

The CA may withdraw:

- Any time before performance by the accused begins;
- If accused fails to fulfill a material term of the PTA;
- If MJ finds disagreement as to a material term; or
- If findings are set aside by court of appeals.

By the accused: The accused may withdraw at any time, but after findings (guilty/not guilty) are announced by the court, the accused may withdraw only with permission of the (Military Judge) MJ.

COURTS-MARTIAL: POST-TRIAL REVIEW

REFERENCES: (a) [MCM, RCM 1101, 1103, 1104, 1105, 1106, 1107, 1113](#)
(b) UCMJ, Arts. 57, 58, 58a, 58b, 60
(c) [JAGMAN 0151, 0152](#)
(d) [JAGINST 5814.1A](#)

POST TRIAL PROCESSING: The government has the duty to ensure timely post-trial processing of military justice cases. The government must meet strict guidelines in disposing of a case after a sentence is adjudged at trial. This is important to CAs since a failure to adhere to proper processing of records of trial (ROT) could result in an overturned conviction [see reference (d)]. [See also the *Convening Authority's Action Checklist* in enclosure (4) of reference (d)].

CA ACTION: Review of the court-martial by the Convening Authority after the trials a crucial but often neglected step in the court-martial process that may cause serious consequences.

EFFECTIVE DATE OF ADJUDGED PUNISHMENTS: Most punishments do not take effect until the CA takes action. Exceptions are confinement, which starts immediately, and forfeiture of pay and reduction in pay grade, which start 14 days after trial. [See reference (c)]. Other punishments (e.g. restriction, hard labor without confinement) will not go into effect until CA acts. Dismissal, Dishonorable Discharge (DD) and Bad Conduct Discharge (BCD) will not take effect until appellate review is complete.

AUTOMATIC PUNISHMENTS: In addition to adjudged punishments, there are two types of automatic (statutory) punishments which go into effect for certain types of cases:

- **AUTOMATIC REDUCTION:** When an enlisted member's court-martial sentence, as approved by the CA, includes: (1) a discharge or (2) more than 90 days confinement, the member will automatically be reduced to the paygrade of E-1 upon the date of the CA's action.
 - **CA's OPTIONS:** The CA can suspend, remit (cancel), modify (approve reduction to a lower paygrade but not all the way down to E-1), or allow this automatic reduction to occur.
- **AUTOMATIC FORFEITURE:** When any member's court-martial sentence includes: (1) confinement for more than 6 months or death, or (2) a BCD or DD plus any amount of confinement, the member will automatically forfeit 2/3 pay (in the case of a SPCM) or all pay and allowances (in the case of a GCM) starting at the earlier of CA's action or 14 days after the sentence is adjudged. The automatic forfeiture will be taken throughout the period of confinement and parole.
 - **CA's OPTIONS:** The CA can defer automatic forfeiture until CA's action. (This means the automatic forfeiture of pay will not take effect, as it normally would, 14 days after the trial. Deferment changes the effective date to the date of the CA's action.) At action,

the CA can approve the automatic forfeiture; alternatively, the CA may waive the forfeiture for a maximum of 6 months in favor of the accused's dependents. Usually the accused sets up an allotment for a dependent in the amount of the automatic forfeiture.

WHEN CA MAY TAKE ACTION: Before the CA's action, the record of trial must be prepared by the RLSO or LSSS, authenticated by the TC and MJ, and served on the accused and his/her DC. For all GCMs that result in a finding of guilty and any cases involving a punitive discharge, an SJA or Legal Officer Review must be prepared by the command and served on the accused and his or her DC. Finally, the accused must be given the opportunity to seek clemency from the CA. An accused seeks clemency by "submitting matters" (such as letters from family members, friends, command members, or even the victim or members of the court-martial) that explain to the CA why he should approve a lower sentence than sentence adjudged at trial.

ATTENTION TO DETAIL: CA's action letters must include specific information about the accused and must accurately reflect information about the trial. Use of the standard language and forms in the MCM and JAGMAN is **crucial**.

FINDINGS OF THE COURT:

- CA is not required to take any action on findings.
- However, the CA has the following options:
 - The CA may approve or disapprove of the court's findings.
 - The CA may disapprove a finding of *guilty* on an original charge but approve a finding of *guilty* for a lesser included offense.
 - The CA may NOT change a finding of *not guilty* to a finding of *guilty*; however, a *guilty* may be changed to *not guilty*.

If the CA says nothing about the findings, it is presumed that he approves the findings of the court-martial.

SENTENCE OF THE COURT:

- CA must take action on the sentence.
 - The CA has the following options:
 - The CA may **approve** any punishment as adjudged by the court-martial.
 - The CA may **disapprove** any punishment in whole or in part.
 - The CA may **suspend** a punishment for a "reasonable" amount of

time, usually six or twelve months from the date of trial or the date of the CA's action letter.

- The CA may **mitigate** a punishment; mitigation reduces an adjudged punishment to a lesser amount (e.g., 90 days to 60 days) or to a lesser kind (e.g., confinement to restriction).
- The CA may **defer** punishments. This occurs *before* the official CA's action. For punishments that are supposed to take effect before the CA's action, the CA may delay the effective date of the punishment for a period of time. Usually deferment of punishment ends on the date of the CA's action.

VICTIM/WITNESS ISSUES

REFERENCES: (a) [DoD Dir. 1030.01](#)
(b) [SECNAVINST 5800.11B](#) (series)
(c) [OPNAVINST 5800.7A](#) (series)
(d) [SECNAVINST 1752.4A](#) (series)
(e) [OPNAVINST 1752.1](#) (series)
(f) [NAVADMIN 128/05](#)
(g) [MCO P5800.16A](#) (series) [LEGADMINMAN, Chapter 6]
(h) [MCO P1700.24B](#) (series)
(i) [MCO 1752.5A](#) (series)
(j) [DoD Inst. 1342.24](#)
(k) [SECNAVINST 1752.3B](#) (series)
(l) OPNAVINST 3100.6J (series)
(m) [MCO 3504.2](#) (series)

APPOINT A COMMAND VICTIM & WITNESS ASSISTANCE

COORDINATOR: A responsible individual should be appointed in writing to coordinate victims'/witnesses' issues and to act as a Data Collection Coordinator.

BASIC REQUIREMENTS: Upon notification of incident wherein a victim or witness of a crime is identified, ensure that advisement of rights are made using form DD2701 [see *reference (d)*, enclosure 1].

- **Victim:** A person who has suffered direct physical, emotional, pecuniary harm as a result of the commission of a crime.
- **Witness:** A person who has information or evidence about a crime within the investigative jurisdiction of the Department of the Navy (DON), and who provides that knowledge to a DON representative.

COUNSELING AND TREATMENT: Victims of sexual assault and rape should receive immediate treatment and counseling [see *reference (c)*]. Contact the Family Advocacy Representative (FAR-USN) or Family Advocacy Program Manager (FAPM-USMC) [see *reference (k)*].

PREVENT REPRISAL: Protect victims and witnesses. Remove the alleged offender from workspace if necessary. For an alleged military offender consider necessity of issuing a Military Protective Order (MPO). [See *FAMILY ADVOCACY / DOMESTIC VIOLENCE and PRETRIAL RESTRAINT*]. An MPO may be issued in situations other than family violence (e.g., boyfriend/girlfriend disputes). Consider TAD transfer of alleged offender or victim. If the victim is military or military dependent refer them to a Legal Assistance attorney and/or the NLSO for specific advice, detailed below. If the alleged offender is civilian, consider seeking debarment from the base by the installation commander.

PSYCHIATRIC EVALUATION: Do not refer a victim or witness for a mental health evaluation unless it is done in compliance with the Mental Health Evaluation Instruction. [See *MENTAL HEALTH EVALUATIONS*].

FOLLOW UP INFORMATION: Provide information and assistance to victims and witnesses at all stages. Victims and witnesses should be informed regarding apprehension of the accused: changes in confinement status; investigation status; decisions not to prosecute; preferral and referral of charges; conviction, sentencing and final resolution of the charges against the accused [see *references (a), (b), (c), and (g)*].

POTENTIAL INCIDENT REPORTING REQUIREMENTS:

- OPREP-3 for major incidents, and SITREPS formatted IAW OPNAVINST 3100.6J, (information from NAVPERS 1752/1).
- Major criminal offenses to NCIS [see *NCIS INCIDENT REPORTING*].
- Violent crime message.
- For incidents involving sexual assaults, immediately notify your Sexual Assault Prevention and Response (SAPR, formerly SAVI) representative, NCIS, and your Staff Judge Advocate (SJA).
- Incidents involving sexual harassment [see *SEXUAL HARASSMENT*].
- Incidents involving officers IAW with TYCOM/Second Echelon requirements [see *OFFICER MISCONDUCT*].

ADDITIONAL REPORTING REQUIREMENT FOR SEXUAL ASSAULT

INCIDENTS: In addition to requirements listed above, commands must report to Echelon 2 commanders within 24 hours of receiving a report of incident and submit follow-up reports at least monthly until resolution [see *reference (l)*].

- Sexual assault includes rape, forcible sodomy, assault with intent to commit rape or sodomy, and indecent assault.
- Must report assaults occurring in areas of Navy control regardless of victims or perpetrator's duty status, military affiliation, or nationality.
- Must report incidents involving victims who are family members and victims and alleged perpetrators who are active duty naval service members or another service assigned to a naval command regardless of location of incident.
- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program [see *DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS*].

USMC: ADDITIONAL REQUIREMENTS FOR RESPONDING TO SEXUAL

ASSAULT INCIDENTS: Reference (g) details a commander's responsibilities. Generally, commanders must ensure sexual assault victims are treated fairly, with sensitivity, that information related to the victim is handled in a confidential manner, that the victim has access to necessary services, and that the victim is provided monthly updates on the status of their case. Consult with your SJA and victim advocate.

SUPPORT TO THE SEXUAL ASSAULT PREVENTION AND RESPONSE

(SAPR) PROGRAM (Formerly SAVI): Commands must be prepared to prevent and respond to allegations of sexual assault. Establish an atmosphere of zero tolerance of sexual assault and rape [see enclosure (4) of reference (e)].

FAMILY ADVOCACY PROGRAM (FAP): The Family Advocacy Program (FAP) provides clinical assessment, treatment and services for military members and their families involved in allegations of domestic abuse and child abuse. The goals of victim safety and well-being and offender accountability form the basis of the clinical provider's work in responding to allegations of domestic abuse and child abuse [see reference (k)]. [See also *DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS*].

TRANSITIONAL COMPENSATION: Family members who were abused by a servicemember who is subsequently separated for that abuse, either by court-martial or administrative separation, are entitled to transitional compensation [see reference (j)]. Transitional compensation is not based on the financial needs of the family. The program provides monthly payments of transitional compensation and other benefits (medical, dental, etc.) to the family members providing that the members do not cohabit with the abusive member. Your local Family Service Center/Marine and Family Services personnel can assist in the application process.

LEGAL ASSISTANCE: Legal assistance attorneys at NLSOs and LSSS offices will provide the following services to victims:

- Information on the Victim/Witness program, including:
 - The rights and benefits of a Victim.
 - The role of a victim advocate and privileges.
 - The differences of privileged communication with a Legal Assistance Attorney and the unprivileged communications to a victim advocate.
- The differences between restricted and unrestricted reporting.
- General information concerning military justice and the roles and responsibilities of the trial counsel, defense counsel and investigators.
- Emotional, mental health and medical counseling.
- Availability and protections of civilian and military protection orders.
- Transitional compensation and other state/federal programs.
- Traditional legal assistance services, e.g., estate planning, taxes, powers of attorney, consumer affairs and leases.

Section II: OTHER ADMINISTRATIVE & DISCIPLINARY OPTIONS

REFERENCES: (a) [MCM / RCM 306](#)
(b) JAGMAN (series)
(c) MILPERSMAN
(d) BUPERSINST [1610.10C](#)
(e) [MCO P1610.7F](#) (series)
(f) SECNAV M-5510.30
(g) BUPERSINST 1430.16F
(h) SECNAVINST 1920.6C

APPROPRIATE ACTION IN EVERY CASE: “The disposition decision is one of the most important and difficult decisions facing a commander.” The discussion to RCM 306 lists 10 factors that the commander should consider (e.g., character of the accused’s military service; nature of the incident; victim and witness availability, etc.) [reference (a), *Discussion of section (b)*]. Prompt action is always essential.

NO ACTION OR DISMISSAL: Upon completion of an investigation a commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed.

ADMINISTRATIVE ACTION: May be taken in addition to or instead of disciplinary action as circumstances warrant.

- Informal resolution of minor sexual harassment incidents or very minor misconduct.
- Non-punitive measures - leadership tool to correct unacceptable behavior. [reference (b), 0102]
 - Non-punitive Censure. [reference (b), 0105]
 - Extra Military Instruction (EMI). [reference (b), 0103]
 - Denial of Privileges. [Reference (b), 0104]
 - Letter of Instruction (LOI). [reference (c), 1611-020, 1616-010]
- FITREP and EVALS. [Reference (d), 1610.10C; reference (e), P1610.7]
- Security clearance adjustment or withdrawal [reference (f)]
- Withhold or withdraw advancement/promotion recommendation. [reference (g)]
- Reassignment/early transfer/delay of transfer.
- Detachment for Cause (DFC). [reference (c), 1611-020, 1616-010]
- Administrative Separation/Board of Inquiry. [reference (c), 1910; reference (h)]

NON-PUNITIVE MEASURES

REFERENCES: (a) [JAGMAN](#)
(b) [OPNAVINST 3120.32C](#), Section 142

PURPOSE: Correct minor infractions and deficiencies.

FUNCTION: A leadership tool for teaching and training instead of punishment.

NON-PUNITIVE CENSURE [see reference (a), 0105]: Two types:

- Oral: Providing verbal correction/instruction.
- Written: “Non-punitive Letter of Caution” Limitations: Private (one copy). Not mentioned in evals/fitreps. (Underlying misconduct may be mentioned)

EXTRA MILITARY INSTRUCTION (EMI) [see reference (a), 0103]: Command obligation to have policy and ensure EMI not abused.

EMI ANALYSIS:

- Identify the deficiency. Assign corrective instruction logically related to deficiency. Recommend order be given in writing.

WHO MAY ASSIGN EMI?

- EMI completed during working hours – Not limited to any rank. Ordinarily Officers/Petty Officers.
- EMI completed after working hours – CO or OIC only, but CO/OIC may delegate to officers and petty officers.

LIMITATIONS ON EMI:

- Two hours maximum per day
- Not on Sabbath
- Reasonable number of days
- Normal liberty upon completion
- No entry in service record

ADMINISTRATIVE WITHHOLDING OF PRIVILEGES [see reference (a), 0104]:

- Those with the power to grant a privilege may also revoke that privilege.
- Only privileges, and not rights, may be withheld.
- Privilege: A benefit for the member’s enjoyment (e.g., special liberty, driving on base, civilian clothing, exchange of duty, use of base theater/club.)

LAWFUL WAYS TO DENY NORMAL LIBERTY:

- Right: Part of compensation or required for the performance of duties (e.g., medical care, dental care, quarters, subsistence, pay, normal liberty).
- EMI
- Liberty risk, but only overseas
- Extension of working hours for mission requirements
- Limited health/safety reasons (i.e., drunk watch, immunization, and family advocacy 72-hour cooling-off period)
- Punishment awarded at NJP or courts-martial
- Pretrial restraint for courts-martial

“VOLUNTARY” RESTRAINT: “House Arrest” a.k.a. “Confinement to Quarters,” or HACQ, is never authorized.

REMEDIES FOR ILLEGAL NON-PUNITIVE MEASURES:

- Request mast.
- Article 138 (UCMJ) complaint against CO.
- Article 1150 (NAVREGS) complaint against superior.
- Congressional inquiry/Hotline complaint.

Reserve Note:

Normal liberty can be denied for Reservists on Active Duty. The guidance provided above applies to Reservists on Active Duty.

Reservists in a drilling status (Inactive Duty for Training) do not have liberty. Accordingly, a CO may not deny liberty to a reservist in a drilling status. A CO cannot lawfully require a drilling Reservist to work beyond the normal four hour drill period. Additionally, a CO cannot restrict a drilling Reservist's liberty between drill periods.

NJP JURISDICTION

REFERENCES: (a) UCMJ, Art. 15
(b) [MCM, Part V](#)
(c) [JAGMAN 0106, 0107, 0108, 0124](#)

CO's AUTHORITY NON-DELEGABLE: Authority to impose NJP is normally **not** delegable (exception for Flag Officers who may designate a principal assistant [reference (c), 0106]). CO has authority over all Navy/Marine members of his/her command.

Jurisdiction determined by:

- Member of command at the time NJP is imposed, **not** at the time of the offense.
- *TAD Personnel*: CO of either permanent or temporary command can impose NJP, but both COs cannot impose for the same offense.
- *Embarked units*: Unit commanders defer to the CO of the ship, except, generally unit commander retains NJP authority over units embarked for transportation only.
- *Multi-service command*: Navy/Marine personnel are subject to NJP from multi-service commander.

OFFENSES PUNISHABLE: CO has broad discretion to decide what offenses should be handled at NJP.

- **GENERAL GUIDANCE:** NJP is for “minor” offenses. To determine if an offense is minor is up to the commander’s discretion, however, among the many factors to be considered, a minor offense is an offense where a dishonorable discharge (DD) or more than one year’s confinement is **not** authorized at a general court martial.
- **“DOUBLE PUNISHMENT”:** Punishment of a minor offense at NJP will bar a subsequent court-martial for the same offense. Punishment of a serious offense at NJP will not bar a subsequent court-martial for the same offense, but the accused will receive credit for NJP against any ultimate court-martial sentence. The military judge (MJ) will decide if the offense is major or minor.
- **PRIOR CIVILIAN ACTION** [reference (c), 0124]: Prior federal court action bars NJP or court-martial. Prior State/local/foreign court action does not bar NJP or court-martial, but the command must request permission to proceed from the General Court-Martial Convening Authority (GCMCA), who must report to OJAG (Code 20) or the Commandant of the Marine Corps (JAM) if permission is granted.
- Criteria – exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest.

DUAL ACTION: If both the Navy and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. Senior Officer Present Afloat and the area coordinator SJA, as well as NCIS, should be consulted if it appears that both the Navy and local authorities are contemplating prosecution.

STATUTE OF LIMITATIONS: Two years from date of offense, not two years from the date the command found out about the offense.

Reserve Note: Reservists are subject to UCMJ jurisdiction if they commit an offense defined by the UCMJ while on Active Duty or in a drilling status (Inactive Duty for Training). The guidance provided above relating to a CO's authority and discretion applies to Reserve COs and Reservists.

NJP can be imposed during active duty or inactive duty training when the misconduct occurred or at a subsequent period of active duty or inactive duty training (so long as this is within 2 years of the date of the offense).

The accused can waive his right to be present at NJP, and the CO or officer in charge may impose NJP take effect during a subsequent period of active duty or inactive duty training.

Reservists can be awarded restriction or extra duty at NJP. However, the restriction or extra duty may not extend beyond the normal termination of the duty period. Awarded but not served restriction or extra duty can be "carried over" to a later period of active duty or inactive duty training.

Correctional custody, extra duties, and arrest in quarters may not be imposed on Reservists on inactive duty training.

Reservists cannot be awarded confinement on bread and water without approval of the Secretary of the Navy.

Pay subject to forfeiture refers only to basic pay plus sea or foreign duty pay. If punishment also includes reduction in grade, forfeiture shall be based on the grade to which the accused is reduced.

Fines on Reservists permanently assigned to inactive duty shall be based on the total amount subject to forfeiture at the time adjudged.

A CO can request that the GCMCA involuntary recall the accused to active duty or inactive duty training for purposes of imposing NJP.

NJP – PRE-MAST & MAST PROCEEDINGS

REFERENCES: (a) UCMJ, Article 15
(b) [MCM Part V](#)
(c) [JAGMAN 0109-0115](#)
(d) [MCO P5800.16A](#) (series)
(LEGADMINMAN)
(e) [JAGMAN](#)

DISCIPLINARY REVIEW BOARD (D RB)/EXECUTIVE OFFICER INQUIRY (XOI): Investigative tool that is not required, but may be used to screen cases for the CO. Member cannot refuse DRB/XOI.

RIGHT TO REFUSE NJP

- ALL MEMBERS CAN REFUSE NJP AND DEMAND TRIAL BY COURT-MARTIAL IN LIEU OF NON-JUDICIAL PUNISHMENT, UNLESS ATTACHED TO OR EMBARKED ON A VESSEL.
- Right to refuse ends when punishment is imposed/announced.
- If member refuses NJP, CO retains all administrative and disciplinary options, except NJP, open to him/her prior to the refusal.

RIGHT TO CONSULT WITH COUNSEL:

- There is no right to counsel at NJP. The only counseling related to NJP is the right to consult with counsel about whether or not to accept NJP. This right applies only to members who have the right to refuse NJP (i.e. those not attached to or embarked on a vessel) – *Booker* rights.
- If a member has the right to refuse NJP, asks to consult with counsel, and is denied this opportunity, the command may still hold NJP (presuming the service member does not actually assert their right to refuse NJP). The only consequence to the command is that this NJP will not be admissible in aggravation at any later court-martial that might occur.

RIGHTS AT NJP HEARING:

- To be present. CO may not hold NJP in member's absence; however, member may waive right to personal appearance.
- To remain silent.
- To have a personal representative.
- To examine evidence.
- To present matters in defense or extenuation and mitigation.
- To call "reasonably available" witnesses. (No subpoena power over civilian witnesses.)

- To a public hearing. Member may request “closed mast” but no right to one.

MILITARY RULES OF EVIDENCE: Except privileges and self-incrimination, Military Rules of Evidence do not apply.

STANDARD OF PROOF: Preponderance of the evidence is the standard, but still must prove every element of the offense.

CO SCRIPT/GUIDE FOR NJP: [See reference (e, Appendix A-1-e)].

CO's OPTIONS:

- Dismissal – with or without warning;
- Dismissal and imposition of administrative/non-punitive measures [see *ADMINISTRATIVE & DISCIPLINARY OPTIONS*];
- Imposition of authorized punishment. [see *APPENDIX A: NJP Punishment Chart*]; or
- Refer to a higher forum or superior CA.

PUBLICATION OF NJP RESULTS:

- Publication allowed within one month of NJP or if appealed, one month within denial of appeal.
- If only military members have access to information, full publication, including name, is allowed. If there is civilian access to the information, the member's name must be removed.
- Best course of action: Publish **only** date of NJP, offense, paygrade of member, and punishment.

NJP – CLEMENCY & CORRECTIVE ACTION

REFERENCES: (a) UCMJ, Article 15(d)
(b) [MCM, Part V](#)
(c) [MILPERSMAN 5812-010](#)
(d) [JAGMAN 0118](#)
(e) [MCO P5800.16](#) (LEGADMINMAN) (series)

AUTHORITY TO GRANT CLEMENCY OR TAKE CORRECTIVE ACTION

- Imposing officer;
- Successor in command (temporary or permanent);
- Subsequent CO after transfer of member; or
- Appellate authority (GCMCA).

TYPE OF CORRECTIVE ACTION:

SET ASIDE: Set aside any or all of the punishment (executed or unexecuted) and restore all property, privileges, and rights affected by that portion of the punishment. Set-asides are used to correct a clear injustice. Clear injustice is defined as an unwaived legal or factual error which affirmatively injured the rights of the member. Clear injustice does not include the fact that the member's performance has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on retention or promotion potential of the member. Absent unusual circumstances, the power to set aside punishment will be exercised within four months of the punishment. Set-asides exceeding this four-month timeframe must include a detailed justification of the unusual circumstances which resulted in the delay. NJP authority may only set aside punishments that he/she has the power to impose. Setting aside an NJP has the effect of voiding the punishment and restoring the service member to the position he would have been in had the NJP not been imposed, including repayment of back pay for any awarded reduction in rate or forfeitures/fines. See reference (c).

REMISSION: Cancel unexecuted portions of a punishment. End of current enlistment or discharge automatically remits unexecuted punishment. Member may not be retained beyond EAOS to serve NJP punishment.

MITIGATION: A reduction in the quantity or quality of an unexecuted punishment. The new mitigated punishment may not be for a period greater than the original punishment.

SUSPENSION: Punishment held in abeyance/member on probation for up to 6 months.

- Conditions of suspension – Member cannot commit further violations of the UCMJ. Additional terms should be in writing. Must be lawful order capable of performance/compliance. (Examples: make restitution to a

victim; to **not** enter certain establishments; to submit to searches; to conduct GMT; to successfully complete course of rehabilitation, etc.)

- Vacating suspension – If member violates terms of suspension or UCMJ, suspension may be vacated by any authority competent to impose punishment. Member should be notified and, although a hearing is not required, unless impracticable, the member should be given an opportunity to be heard. The decision to vacate is not appealable.

TIME LIMITS

- The power to set aside an NJP must be exercised within a reasonable time after the punishment has been executed. Absent unusual circumstances, 4 months is considered a reasonable time.
- Paragraph 3005.3c of reference (e) allows suspension – as opposed to setting aside – of an executed punishment of reduction or forfeiture only within 4 months of the date it is executed.

NJP – APPEALS

REFERENCES: (a) UCMJ, Article 15
(b) [MCM](#), Part V
(c) [JAGMAN](#) 0116, 0117
(d) [MCO P5800.16A](#) (LEGADMINMAN) (series)

REVIEWING AUTHORITY: Navy – area coordinator or General Court-Martial Convening Authority (GCMCA) in imposing officer's chain of command. Marine Corps – immediate superior in the operational chain of command to imposing officer

GROUNDS FOR APPEAL:

- Unjust: Not guilty of offense
- Disproportionate: Guilty but punishment too harsh or unfair

TIME LIMIT:

- 5 working days (excluding weekends and holidays) from date of imposition of punishment;
- Extensions may be requested for good cause;
- Late appeals may be denied only by the appellate authority.

PROCEDURE:

- Appeal must be in writing;
- Via the officer who imposed NJP;
- Endorsement should include:
 - Statement of facts
 - Copies of documents/witness statements
 - Copy of member's SRB performance

REQUEST FOR STAY OF RESTRAINT: Applies only to restraint and extra duties. May be made in writing or verbally. If request is made and appellate authority fails to act within 5 days after appeal submitted, restraint/extra duty punishments must be stayed until the appellate authority acts.

APPELLATE AUTHORITY'S ACTION: Standard of review is “abuse of discretion.”

REFERRAL TO JUDGE ADVOCATE: Required if punishment was greater than:

- Arrest in quarters for more than 7 days

- CC for more than 7 days
- Forfeiture of more than 7 days pay
- Reduction of one or more paygrades from E-4 or higher
- Extra duties for more than 14 days
- Restriction for more than 14 days
- Detention for more than 14 days.

REHEARING: At any rehearing, the maximum punishment is limited to the punishment imposed at the original NJP.

Section III: JAGMAN INVESTIGATIONS

REFERENCES: (a) [JAGMAN, Chapter II](#)
(b) [MILPERSMAN 1770-010](#)
(c) [MCO P5800.16A](#) (LEGADMINMAN)
(d) [JAGINST 5830.1A](#) (series)
(e) JAGMAN Investigation Handbook

TYPES OF INVESTIGATIONS:

- Preliminary Inquiry (PI)
- Courts of Inquiry (COI)
- Boards of Inquiry (BOI)
- Command Investigations (CI)
- Litigation-Report Investigations (LR)
- Dual Purpose Investigations

PRELIMINARY INQUIRY (PI): The JAGMAN provides CA's the option to conduct a 3-day PI to determine whether further investigation is required. Based upon the result of the PI, the CA may decide to take no action or to convene some form of JAGMAN Investigation. Results of PI's may need to be reported to ISIC through normal reporting methods. Furthermore, if the incident may involve potential litigation claims, then the PI should be conducted under the supervision of a JAG.

COURT OF INQUIRY (COI): The most formal of all JAGMANS. Used for the most serious cases, "major incidents," involving multiple deaths, significant national or international press interest, significant environmental damage, etc. (see reference (a), App. A-2-a paragraph 9). Must be convened by a General Court-Martial Convening Authority (GCMCA) or a person designated by SECNAV. COIs have the power to subpoena witnesses.

BOARD OF INQUIRY (BOI): [Not to be confused with officer separation BOIs] Less formal than a COI, but also used for "major incidents." Must be convened by a GCMCA. BOIs have no subpoena power but they can order naval personnel to appear, testify, and produce evidence.

COMMAND INVESTIGATION (CI): Most frequently used investigation of all JAGMANS. Not used for any incident considered a "major incident" until command consults with GCMCA.

- More than one person can be assigned as an Investigating Officer (IO).
- Testimony may be sworn or unsworn.
- Report should include Findings of Fact, Opinions, Recommendations, and Recommended Corrective Action.
- No subpoena power over civilians.

LITIGATION-REPORT INVESTIGATIONS (LR): This form of JAGMAN Investigation is utilized when the primary purpose of the investigation is to defend or protect the legal interests of the DON and the U.S. Therefore, the findings must be protected from disclosure to parties whose litigation interests maybe adverse to the interests of the U.S. The LR is designed to be “attorney work product.”

- The CA must consult with the “cognizant judge advocate” before convening.
- Requires special Convening Order [see reference (a)].
- The investigation is conducted under direction and supervision of a JAG.
- Special rules for witness statements.
- Opinions & recommendations only ordered under the authority of the JAG.
- Every page of the report will be labeled “FOR OFFICIAL USE ONLY LITIGATION/ ATTORNEY WORK PRODUCT (See reference (a), 0210e)
- May not be used to investigate major incidents

ENDORSEMENTS: CO's should address any & all deficiencies identified in the investigation, and detail corrective action taken. Special rules apply in referencing certain admin and disciplinary actions (e.g., non-punitive letters shall not be mentioned).

- Command Investigations: Per reference (a), all command investigations must be forwarded to the local GCMCA. However, the local GCMCA may set local policy on which command investigations should be forwarded. It is no longer appropriate to make OJAG the ultimate addressee.
- LRs: Forward to OJAG Tort Claims Unit, 9620 Maryland Ave., Suite 100, Norfolk, VA 23511-2989.

RETENTION:

- Command Investigations: retain copy for 2 years.
- LRs: Call OJAG Code 15 (DSN 325-4600 or (202) 685-4609) before destroying.

FOIA RELEASE AUTHORITIES:

- Command Investigations: Final reviewer (GCMCA).
- LRs: OJAG.

Line of Duty/MISCONDUCT: Whenever an injury occurs which requires a LOD/Misconduct determination, the command must conduct a PI and forward the results to the GCMCA using the Personnel Casualty Report or CI if appropriate. See reference (b).

DOCUMENTING LOD/MISCONDUCT:

- Health/medical record entries: Where CO concludes that injury was “in the LOD, not due to misconduct.”

- Command Investigations: Where possibility that determination will be “not in the LOD” or “due to misconduct.”
- “Limited Investigation”: Authorized where member’s death occurs in CONUS, off-base, while on liberty, and there is no discernable nexus between circumstances of death and the naval service.
- JAGMAN Investigations: Required in all cases not meeting above test.

See *DEATH INVESTIGATIONS*.

DUAL PURPOSE INVESTIGATIONS: Some major incidents will produce the need for multiple investigations. When interests of transparency trump protectionism, a “dual purpose” investigation may be appropriate. Contact OJAG for assistance determining whether such an investigation is appropriate for your needs. (See reference (a), 0210, 0204).

Reserve Notes: Active service for line of duty determinations is defined for reservists in section 0222 in reference (a). Recording line of duty determinations for reservists is detailed in section 0229; OPNAVINST 1770.3 (series) provides additional information on Reserve Component Incapacitation Benefits and their relationship to LOD/misconduct findings. Section 0231 outlines unique considerations in reserve cases, including situations in which reservists incur an injury or illness while on active duty, and section 0252 covers special provisions for reservists. Section 0236 notes the expansion of Survivor Benefits Plan program to surviving spouses of reservists who are not eligible for retirement but who die from an injury or illness incurred or aggravated in the line of duty (LOD) during inactive training.

DEATH INVESTIGATIONS

REFERENCES: (a) [JAGMAN Sections 0225-0232](#)
(b) [MILPERSMAN 1770-010 to 1770-260](#)
(c) [MCO P5800.16A \(LEGADMINMAN\) \(series\)](#)
(d) [MCO P3040.4E \(series\)](#)

PERSONNEL CASUALTY REPORT: Required in the event of the death of a member [see reference (b)].

NCIS NOTIFICATION: Must be made if there is a death occurring on a Naval vessel or Navy/Marine Corps aircraft or installation except when the cause of death is medically attributable to disease or natural causes.

JAGMAN INVESTIGATION:

- If death occurred in CONUS, off-base, while the member was off-duty, and there is no connection between the Naval service and the circumstances of death, the command may conduct a “limited investigation” and simply obtain the investigation (police report and/or autopsy) completed by civilian authorities and maintain the record as an internal report. The command shall document, in writing, the reasons a limited investigation was conducted, attaching the enumerated reasons to the internal report.
- At a minimum, a preliminary inquiry shall be conducted into the death of a member of the naval service or into the death of a civilian aboard a place under Naval control.
- If a death is the result of a previously known medical condition and medical care is not in issue; or, death was caused by enemy action, no investigation is required.
- All other circumstances, a full JAGMAN investigation (typically, a command investigation) is required.

STATUS OF INVESTIGATION REPORTS (SIRs): Required every 14 days until the JAGMAN investigation is forwarded to the next reviewing authority [see reference (b)].

LINE OF DUTY DETERMINATIONS: Required for **all active duty** death cases. If the deceased's conduct is called into question, the Commanding Officer (CO) may appoint an individual not associated with the case (outside the chain of command) to review the investigation from the perspective of the deceased, to ensure thoroughness and accuracy of the findings.

FORWARDING: Do not delay while awaiting final autopsy reports, death certificates, etc. Such documents can be forwarded under separate cover.

Reserve Notes: Sections 0229 and 0231 of the JAGMAN pertain specifically to procedures for LOD determinations that involve reservists. Accordingly, this reference addresses issues that arise during reservist death investigations.

Section 1770 of the MILPSEMAN deals with Casualties and Survivor Benefits. MILPERSMAN 1770-040 deals specifically with reporting the death of non-active duty sailors.

MCO P5800.16A, ch. 8, para. 7 states that an LOD investigation should be conducted “whenever an active duty service member of the naval service dies.” MCO P5800.16A does not specifically address the need for an LOD investigation in the case of a reservist who dies while performing military duty. Reference (a), JAGMAN, JAGINST 5800.7E, para. 0220c and reference (d), MCO P3040.4E, of the QUICKMAN’s guidance states that active duty for purposes of line of duty determinations in death cases includes reserve components serving on active duty, active duty for training (ADT), even for periods less than 30 days, and inactive duty for training (IDT.)

The Marine Corps Casualty Procedures Manual states that active duty for purposes of the Marine Corps Casualty Procedures Manual includes Reserve Officer Training Corps applicants and members of the Reserve components serving on active duty, ADT, or IDT. MCO P3040.4E, para. 1001.

[See also JAGMAN INVESTIGATION and SUICIDES, ATTEMPTS & GESTURES].

REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL

REFERENCES: (a) [SECNAVINST M-5510.36](#) (Chapter 12)
(b) [JAGMAN Chapters 1 & 2](#)

POLICY: A loss of classified information occurs when it cannot be accounted for or be physically located. A compromise is the unauthorized disclosure of classified information to a person(s) who does not have a valid clearance, authorized access or a need-to-know. A possible compromise occurs when classified information is not properly controlled.

REPORTING REQUIREMENTS: Per reference (a), an individual who becomes aware of a loss or compromise must immediately notify their Commanding Officer or Security Manager. The commanding officer or security manager shall immediately initiate a Preliminary Inquiry (PI). If during the course of the PI it is determined that a loss or compromise of classified info did occur, the local NCIS office shall be notified. The JAGMAN and CNO directives establish additional reporting requirements. The format for appointing orders and PI/JAGMAN should comply with reference (a), Exhibits 12A-D.

PRELIMINARY INQUIRY:

- CO appoints command official (not Security Manager or any person involved in the incident) to conduct PI. (see reference (a), sect. 12-4.1)
- PI shall be initiated and completed within 72 hours. (see reference (a), sect. 12-4.2)
- PI message report (or letter) to ISIC, CNO(N09N2), Originator and Original Classification Authority of information, local NCIS office, National Security Case Disposition Authority (NSCDA), OJAG (Code 17), and others listed in reference (a) sect 12-8. (see reference (a), sect. 12-4.2)
- PI shall completely and accurately identify the information lost or compromised. (see reference (a), sect. 12-5)
- If PI determines no loss or compromise or "possibility of compromise is remote" message report not required. (see reference (a), sect. 12-7.3)
- Results of PI may indicate more detailed investigation required. (see reference (a), sect. 12-9.1, 12-7.2))

JAGMAN INVESTIGATION:

- JAGMAN may be used to recommend any corrective or disciplinary action. (see reference (a), sect. 12-9.1)
- CO appoints command official with proper security clearance (not security manager) to conduct JAGMAN. (see reference (a), sect. 12-10.1)
- Follow reference (b) guidelines; ensure appropriate classification of report and enclosures. (see reference (a), sect. 12-12)
- Forward JAGMAN to CNO (N09N2) via administrative chain of command; info copies to NCIS, OCA and originator. (see reference (a), sect 12-13)

**NATIONAL SECURITY CASE REPORTING (See reference (b),
sect. 0126):**

- Results of PI or NCIS investigation indicates case may meet national security case criteria.
- A national security case is one which, to any serious degree, involves the compromise of a military or defense advantage over any foreign nation or terrorist group; involves willful compromise of classified information; affects our capability to resist hostile or destructive action; or involves an act of terrorism for more detailed investigation required.
- JAGMAN designates certain senior line commanders as National Security Case Disposition Authorities (NSCDA).
- Report case within 72 hour PI period to OJAG and cognizant NSCDA.

If designated as a national security case, NSCDA must make periodic message reports (every 15 days) to CNO until resolution or until the case is determined not to be a national security case.

JUDGE ADVOCATE GENERAL REPORTING: Report all cases to OJAG (Code 17) that involve classified information, whether or not designated a national security case:

- When criminal prosecution contemplated;
- Whenever a major development in the case or investigation occurs; or
- At least every 30 days.

ISIC MAJOR CASE/HIGH VISIBILITY CASE REPORTING

REQUIREMENTS: Some ISICs require periodic reporting on certain types of cases considered "major" or "high visibility." Report to JAG can be sent to ISIC as well to satisfy both requirements in cases involving classified information.

CLAIMS

REFERENCES: (a) [JAGMAN, Chapters II, VIII, and XII](#)
(b) [JAGINST 5890.1A \(series\)](#)

INVESTIGATION: If an incident occurs which gives rise to the possibility that a claim may be submitted either for or against the government, some form of admin investigation will be required in order to adjudicate or defend the claim. Typically, a JAGMAN investigation will be required.

- A “Litigation-Report Investigation” is appropriate whenever the “primary purpose” of the investigation is to defend the legal interests of the Navy.
- Consult the “cognizant judge advocate” before convening a “Litigation-Report Investigation” or if you have questions.

NOTIFICATION: The servicing Code 15 Claims Unit should be notified of any incident which might result in a claim. The Personnel Claims Unit and Tort Claims Unit in Norfolk may be contacted at (757) 440-6315 or DSN 564-3310.

CLAIM RECEIPT: Should the command receive an actual claim, it must be date stamped and the original forwarded immediately to the servicing Code 15 claims unit - along with all accompanying material and original envelope with postmark.

ADVANCE COPY OF INVESTIGATION: Provide the Personnel or Tort Claims Units with an advance copy.

NOTIFICATION OF LAWSUIT: If a lawsuit has been filed against an individual within the command, the command or the Department of the navy (DON), immediately notify the servicing Naval Legal Service Office (NLSO) and Office of the Judge Advocate General (OJAG) Code 15, at DSN 325-4600 or (202) 685-4609.

ADMIRALTY INCIDENTS: Any claim that may arise from the operation of a vessel upon navigable waters is considered an admiralty incident. Every admiralty incident must be reported immediately to OJAG Code 11 at DSN 325-5040 or (202) 685-5040.

FOREIGN CLAIMS: [see FOREIGN CLAIMS].

Section IV: ADMINISTRATIVE SEPARATIONS

REFERENCES: (a) [DOD Dir 1332.14](#)
(b) [MILPERSMAN](#)
(c) [MCO P1900.16F](#) (series) (MARCORSEPMAN)
(d) [NAVADMIN 131/10](#)
(e) [MCO P1070.12K](#) (series)

PURPOSE: Enlisted administrative separations (ADSEPS) are intended to promote readiness by maintaining high standards of performance, conduct, discipline, achieve authorized force levels, and provide for separation of enlisted personnel for various circumstances.

BASIS OF SEPARATION: The reason for separating a service member. A list of bases are found in 1910-100 of reference (b), and Chapter 6 of reference (c). Bases are divided into two broad categories:

- **Voluntary:** The service member requests separation. Reasons may include hardship, pregnancy, conscientious objector, etc. All voluntary separations must be at the convenience of the Government.
- **Involuntary:** The Service initiates the separations process. Involuntary bases include drug abuse, pattern of misconduct, serious offenses, alcohol, rehab failures, etc.

Mandatory basis of separation. Involuntary basis of separation where the commander is required to process.

USMC:

- Second substantiated DUI
- Drug abuse
- Supremacist / Extremist activities
- Sexual harassment
- A second substantiated domestic abuse offense CRC level 3 or above).

Navy:

- Deviant sexual behavior
- Sexual harassment
- Misconduct that could have lead to death or serious bodily injury,
- Drug abuse,
- Illicit use of prescription/over the counter medication/inhalants
- Supremacist / Extremist activity
- Alcohol rehab failure
- Failing to pass 3 physical fitness assessments in a 4 year period (this includes BCA failures)
- Family Advocacy Program (FAP) Failure

CONVENING AUTHORITY: Official authorized to convene the separation process. Normally the service member's Commanding Officer.

NOTIFICATION vs. ADMINISTRATIVE BOARD PROCEDURES

- **Notification:** Appropriate for all Convenience of the Government cases,

and for many misconduct cases where Convening Authority feels General or Honorable discharge is warranted and individual being processed (respondent) is not entitled to a board. Also used for PFA Failure (See *reference (b)*, 1910-170), Alcohol Rehab Failure (See *reference (b)*, 1910-152) and 5 drug abuse exceptions listed in *reference (b)*, 1910-146.

- Administrative Board: most mandatory processing bases (exceptions noted above), and other misconduct cases where CA feels OTH is warranted.
- Right to Board: Member is entitled to an admin board when OTH is authorized and sought, when member has at least 6 years active and/or Reserve service, or when processing is mandatory.

CHARACTERIZATION OF SERVICE:

- Honorable: Met standard of acceptable conduct & performance; or is otherwise so meritorious that any other characterization is clearly inappropriate. For Navy, must have trait avg. of 2.50 or above at EAOS. For USMC, must have Pro/Con marks of 3.0/4.0 at EAS.
- General (under honorable conditions): Honest and faithful service, negative aspects outweigh positive. Member may lose significant benefits, such as GI Bill.
- Other than Honorable (OTH): One or more acts or a pattern of misconduct constituting significant departure from conduct expected from Sailors and Marines. Service member normally loses all benefits.

SEPARATION AUTHORITY (SA): The official who approves a separation.

Navy SAs:

- SPCMCA: When notification procedure used and General or Honorable discharge is least favorable characterization. In all cases where member is involuntarily separated by a Special Court-Martial Convening Authority (SPCMCA), member can request review of case by General Court-Martial Convening Authority (GCMCA) before separation is awarded. See App. J, Overview of Military Justice System.
- GCMCA: When administrative board procedure used if Other than Honorable (OTH) discharge awarded. If General or Honorable discharge is awarded by Admin Board, SPCMCA can act as the SA in some situations. See App. J.

BUPERS/SECNAV: Active duty or reserve personnel within 2 years of retirement; best interest of the service cases; conscientious objection; when separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special general court-martial that did not adjudge a punitive discharge and the GCMCA recommends a characterization of service as under OTH.

USMC SAs:

- **GCMCA:** Most cases.
- **DCM&RA:** When the member is being processed for involuntary separation and has 18 years or more total active military service; when separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special or general court-martial that did not adjudge a punitive discharge, and the GCMCA recommends a characterization of service as under OTH conditions.
- **SECNAV:** Reserve personnel within 2 years of retirement; best interest of the service cases.

LEGAL REVIEW: In cases where an OTH is recommended, or when a letter of deficiency is submitted, the record must be reviewed by a Judge Advocate before the SA can act.

CONDITIONAL WAIVERS: A respondent entitled to an administrative board may request a conditional waiver of his right to a board, contingent upon receiving a General or Honorable discharge. Approved by GCMCA **only** if favorably endorsed by CA.

ENDORsing ADMIN BOARD CASES: If admin board recommends retention, CO may still recommend discharge to SA. As to characterization, CO can recommend a more favorable discharge than the admin board recommended, but service members may not receive a discharge worse than what is recommended by the Board.

USN PAGE 13/USMC PAGE 11 IS EXTREMELY CRITICAL DOCUMENT:

May be a prerequisite to administrative separation processing. Clear guidance on who may issue a Page 13/11 should be promulgated (typically, delegated to Dept Heads and/or Legal Officer). For USMC, the Commanding Officer must sign adverse page 11 entries. See MCO P1070.12 IRAM concerning appropriate entries. Counseling normally required for following basis:

- Parenthood
- Personality disorder
- Entry level performance
- Weight control failure
- Unsatisfactory performance
- Refusing Medical Treatment
- Pattern of misconduct
- Minor disciplinary infractions
- Physical / Mental conditions not amounting to a disability, or
- If required by MARCORSEPMAN paragraph 6105

(ADSEP) AFTER EAOS/EAS: A member may not be adversely administratively separated after the end of their enlistment except for a separation in lieu of court-martial (SILT). If a member is extended beyond EAOS/EAS for purposes of court-martial, and the command decides not to pursue the criminal case, the member must be separated with a characterization of discharge warranted by service record unless the command's action is based on a member-submitted SILT request. Commands should consult with Trial Counsel or SJA before taking action on a case.

ADMIN LEAVE: Separation leave shall not be granted for members who are being administratively discharged.

See also *PREGNANCY; HIV IS SUES; FREEDOM OF EXPRESSION; and DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS*.

Reserve Note: A member of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a member of a Reserve component terminates as follows:

- (a) 180 days after beginning training if the member is ordered to active duty for training for one continuous period of 180 days or more; or
- (b) 90 days after the beginning of the second period of active duty training if the member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty.

Hardship Separations (MILPERSMAN 1910-110): A member of the Navy Reserve, serving on inactive duty may be transferred to the Individual Ready Reserve (IRR) or Standby Reserve when the hardship prevents participation in the Selected Reserve (SELRES) but not mobilization of the member, or may be discharged when the hardship would prevent the member's mobilization.

Cases of members on inactive duty shall be approved by the appropriate SPCMCA and upon completion forwarded to Navy Personnel Command (NAVPERSCOM)

Erroneous or Defective Enlistment (MILPERSMAN 1910-130; 1910-132): For Selected Reserve personnel, separation authority is Navy Personnel Command (NAVPERSCOM).

Unsatisfactory Participation in the Ready Reserve (MILPERSMAN 1910-158): The Notice of Notification Procedures in MILPERSMAN 1910-402 shall be used. When COs determine discharge is not warranted, they may recommend transfer to the Individual Ready Reserve (IRR) or transfer to the Standby Reserve (Inactive) (S-2). This recommendation should be included in the CO's Letter of Transmittal (LOT) to NAVPERSCOM (PERS-4913). The characterization of separation should be Honorable or General (Under Honorable Conditions) per MILPERSMAN 1910-304.

Separation by Reason of Physical Disability (MILPERSMAN 1910-168):

Members on inactive duty may be separated by reason of physical disability upon determination that they are not physically qualified to perform the duties of their rating on active duty in the Navy Reserve in a reasonable manner due to disease or injury.

Forwarding of ADSEP Packages: All ADSEP packages, even those of members discharged locally, must be forwarded to NAVPERSCOM (PERS-913) under a letter of transmittal (LOT). "By direction" signatures are not authorized. If discharged locally, the LOT must include the effective date of discharge and a copy of the service record entry required by section 806. See MILPERSMAN 1910-600 for sample format for LOT.

Transfer to Non-Pay Billets: NOSC COs have the authority to assign unsatisfactory participants to non-pay billets per current COMNAVRESFORCOM policy if the member is being processed for ADSEP. COs should consider if the member is a mobilization asset prior to transferring personnel to a non-pay billet. Assignment to non-pay may be made as soon as the NAVPERS 1910/31 or NAVPERS 1910/32 is signed by the NOSC CO. NOSC COs, at their discretion, may retain all other members being processed for ADSEP in the unit until processing is complete.

Transfer to IRR In Lieu of Administrative Separation: Members may not be transferred to the IRR in lieu of ADSEP processing.

Separation Authority (MILPERSMAN 1910-704): SECNAV is the Separation Authority for involuntary separation of Reservists within 2 years of retirement or retainer pay.

Minimum Notice of Processing (MILPERSMAN 1910-400): Drilling Reservists (Inactive Duty Reservists) have a minimum of 30 days from the date the Administrative Separation Notice of Processing is delivered personally or received by mail at the Member's designated mailing address to respond to the Notice.

If mailed, the Notice of processing should be mailed in such a way that the command receives a notice of delivery of the correspondence.

ENLISTED ADMINISTRATIVE SEPARATION BOARDS

REFERENCES: (a) [MILPERSMAN](#)
(b) [MCO P1900.16F](#) (series) (MARCORSEPMAN)

WHEN REQUIRED: Where respondent is being processed with an Other Than Honorable (OTH) discharge, for certain mandatory processing bases or the member has more than 6 years of service and requests a board. [references (a) and (b)]

ADMIN BOARD COMPOSITION:

- 3 or more commissioned, warrant, or noncommissioned officers (E-7 and above).
- Majority must be commissioned officers and/or warrant officers.
- Senior member must be O-4 or above (line or staff).
- E-7 or above member must be senior to Respondent (lineally).
- Reservist Respondent – only commissioned officers, at least one reservist.

WITNESS REQUESTS: Must be timely. No subpoena power for civilian witnesses. Commanding Officer (CO) may expend funds if live testimony is both necessary and reasonably available based on operational commitments or necessity. CO should consider such things as cost, delay, and interference with mission in deciding whether to expend funds. Testimony via telephone is permitted.

FUNDING FOR THE PRODUCTION OF WITNESSES: The Convening Authority (CA) may authorize funding for the production of witnesses only if the Senior member of the board (after consultation with a judge advocate) or the legal advisor if appointed determines:

- Testimony of the witness(es) is not cumulative.
- Personal appearance of the witness is essential to a fair determination on the issues.
- Written or recorded testimony will not accomplish adequately the same objective.
- The need for live testimony is substantial material and necessary for proper disposition of the case; and
- The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness.
- Factors to be considered in relation to the balancing test include, but are not limited to:
 - (1) The cost of producing the witnesses,
 - (2) The timing of the request for production of the witness,
 - (3) The potential delay that may be caused by producing the witness, and
 - (4) The likelihood of significant interference with military operations.

CONTINUANCE REQUESTS: Respondent should be given reasonable time in order to prepare for admin board.

- Senior member (Navy) rules on requests for continuances.
- Watch delay tactics with respect to upcoming EAOS [see above; ADSEP after EAOS/EAS].
- If respondent goes UA (unauthorized absence) while pending, the board may proceed in absentia. (USMC: Need approval of CMC unless Marine meets requirements listed in paragraph 6312 of reference (b)).

CHALLENGES FOR CAUSE: May be made where board member cannot make a fair and impartial decision. Convening Authority (CA) or Legal Advisor rules on challenges.

ISSUES BEFORE THE ADMIN BOARD:

- Is the basis for separation supported by a preponderance of evidence?
- If the basis is supported, should respondent be separated or retained?
- If separated, what should the characterization of discharge be
 - Honorable
 - General (Under Honorable Conditions), or
 - Other Than Honorable (OTH)

ADMIN BOARD EVIDENCE: Military Rules of Evidence do not apply.

- Pre-service/prior enlistment adverse matters – May only be considered on the issue of retention or separation if the evidence is not remote or isolated. May never be considered on the issue of characterization.
- Findings of Court-Martial or civilian courts are *binding* upon subsequent administrative boards (USN only).

AVOID UNLAWFUL COMMAND INFLUENCE: See COURTS-MARTIAL: BAS/CS.

Reserve Note: Letter transmitting case involving members processed for unsatisfactory participation in the Ready Reserve to the Separating Authority must include a copy of the drill muster record, NAVRES 1570/2 (Rev. 1-98), Satisfactory Participation Requirements/Record of Unexcused Absences; notices to report for physical examinations; and letters trying to locate the Reservist.

OFFICER MISCONDUCT AND SEPARATIONS

REFERENCES: (a) [MILPERSMAN 1611](#)
(b) [BUPERS 1610.10C](#) (series)
(c) [Navy Regulations, Article 1122](#)(b) [BUPERS 1610.10C](#)
(series)
(d) [MILPERSMAN 1070-020](#)(c)
(e) [SECNAVINST 1920.6C](#) (series)
(f) [MCO P5800.16A](#)(LEGADMINMAN) (series)

NOTE: In ALL cases of officer misconduct immediately contact BUPERS (PERS-834) at (901) 874-874-2090/ 4424 or DSN 882-2090/4424 for assistance with Navy cases, or HQMC (JAM) at 703-614-4250 or DSN 224-4250

NOTIFICATION: The following cases require notification and follow on reports for instances of officer misconduct, specifically including:

- Preferral of court-martial charges.
- Imposition of NJP. Notify PERS-834 / JAM by letter as soon as results are “final.” NJP results must be sent via the first flag officer in the admin chain of command. See reference (a) or (f) for appropriate format and informational requirements. Officer imposing NJP must recommend whether officer should be removed from a promotion list and whether they should be made to “show cause” for retention (see *ADMIN SEPARATION*).
- Arrest by civilian authorities. The CO shall report initial pertinent information to NAVPERSCOM (PERS-834) by E-Mail. This includes civil charges for drunk, impaired, or reckless driving. Subsequent status reports shall be submitted as appropriate. When the results of the civil action become final, the CO shall submit a Final Civil Action Report to NAVPERSCOM by letter.
- UA: All facts and circumstances are to be immediately relayed to PERS-834 / JAM by message. Next of kin letters must be sent after 10 days and DD 553 notification sent after 30 days. If the officer had access to classified info, and there are any indications that the UA may be inimical to national security, notify NCIS.
- **UCMJ:** CONUS commanders will notify the primary next of kin telephonically of the absentee's status and request assistance in returning the absentee to military control. All other commanders will do the same when their absentee's dependents are residing in the local area. The administrative processing for officer absentees is the same as for enlisted Marines, except that on the 7th day of absence a message report will be submitted to CMC (PSL and JAM) (Report Symbol MC-1621-03). The report will include the date and hour of absence and any known circumstances. Prior to the 10th day of unauthorized absence, the parent command will prepare and mail a

letter advising the primary next of kin of the Marine's status and requesting assistance in returning the Marine to the parent command.

NON-PUNITIVE LETTERS OF CAUTION (NPLOC's): A common administrative counseling tool in cases for officer poor performance (e.g., non-attainment of qualifications) or neglect. NPLOC's may not be referred to in fitness reports or forwarded to BUPERS. Underlying facts which caused the NPLOC may properly be mentioned in fitness reports. If adverse matter is included in a fitness report or other official record, it must be referred to the member for statement. See reference (b) and JAGMAN 0105. See **NON-PUNITIVE MEASURES**.

ADMIN SEPARATION: Officers may be administrative separated from the service for the following reasons:

Voluntary:

- Resignation / Release from Active Duty (RAD);
- Retirement;
- Inter-service Transfers;
- Convenience of the Government, for e.g.: Parenthood, Hardship, Separation to Accept Public Office.

Involuntary:

- Involuntary RAD;
- Failure to Promote;
- Separation in lieu of Court Martial;
- Substandard Performance of Duty;
- Misconduct, or Moral, or Professional Dereliction.

SEPARATION PROCESS: An officer may be separated using notice procedure, or via board procedure, also known as a BOARD OF INQUIRY (BOI- not to be confused with a BOI administrative investigation format). Notice may be used for probationary officers, who are those officers that have not completed the requisite time in service as established by reference (e). All other officers are entitled to a BOI.

SHOW CAUSE AUTHORITY: Only a Show Cause Authority, as designated or appointed by SECNAV, may convene a BOI. For the Navy, Navy Personnel Command has been designated a Show Cause Authority. For USMC, CMC has been delegated Show Cause Authority for officer recommended separation. CMC has further delegated this authority to DC M&RA. SECNAV has authorized generals and lieutenant generals in command to be designated as alternate show cause authorities.

See *DETACHMENT FOR CAUSE*.

DETACHMENT FOR CAUSE (USN)

REFERENCES: (a) [MILPERSMAN 1611-020](#)
(b) [MILPERSMAN 1616-010](#)

ENLISTED DFC: Detachment for cause (DFC) of officers must be conducted in accordance with reference (a). DFC of chief petty officers and selected petty officers are conducted in accordance with reference (b). CNPC is the approval authority.

GROUNDS: Four reasons for requesting an officer DFC:

- Misconduct;
- Substandard performance involving one or more significant events (gross negligence or complete disregard);
- Substandard performance over an extended period of time after counseling or Letter of Instruction (LOI); or
- Loss of confidence of an officer in command.

DETACHMENT FOR CAUSE IS GENERALLY NOT AN OPTION WHEN:

- Reassignment within the command is possible
- Used for or instead of disciplinary action in order to characterize an officer's performance of duty;
- Officer is at PRD, in receipt of orders or has relief on board; or
- Other available alternatives exist within the command to resolve the situation.

DOCUMENTATION: Unsatisfactory performance over an extended period of time must be properly documented (e.g., LOI). All allegations must be adequately supported by appropriate inquiry or documentation.

DISCIPLINARY ACTION: Must be taken before requesting a DFC based on misconduct or an explanation must be provided to Navy Personnel Command.

DETACHMENT PAPERWORK: Notification to the member must advise the officer that an approved DFC request will be filed in the officer's official record.

OPPORTUNITY TO RESPOND: The officer must be given notice (usually within 15 days) to provide a written response to the DFC request.

NOTIFY: Command must notify NAVPERSCOM PERS 83/ PERS 4 by telephone, email or other correspondence, once decision has been made and/or a DFC request has been made.

Section V: PERSONNEL ISSUES

URINALYSIS PROGRAM

REFERENCES: (a) [OPNAVINST 5350.4D](#) (series)
(b) [SECNAVINST 5300.28E](#)
(c) [MCO P1700.24B](#) (series)
(d) Navy and Marine Corps Specimen Submissions for Steroid Testing

POLICY: In accordance with references (a) through (c), wrongful use of drugs is inconsistent with Navy & Marine Corps policy. Commanders must be vigilant in ensuring a proper urinalysis program prevents and screens for the wrongful use of drugs.

COORDINATORS & OBSERVERS: Coordinators must be designated in writing. Whenever possible assign officers or staff NCOs. (If the command requires the UPC and observers to be tested (e.g., unit sweep), an assistant UPC or UPC from another command shall be used. In such cases where an assistant UPC from the same command is used, primary UPC and observer samples shall be submitted in a separate batch from all other command urine samples.)

- **ATTENTION TO DETAIL & SECURITY:** The entire collection process will be scrutinized in any court-martial or administrative separation board. Admissibility of test results is dependent on a tight chain of custody and protection of samples after collection.
- **TESTING GOAL - USN:** All Navy personnel shall be tested at least once per fiscal year. The most effective means of accomplishing this goal is through unit sweep testing. There are three categories of unit sweeps. They are:
 - Unit sweep - A unit sweep is the testing of an entire command or unit. Unit sweeps are (although no longer mandated), an effective detection and deterrence tool and are recommended for use by all commands. Commands may submit up to five unit sweeps per fiscal year.
 - Sub-unit sweep - Selection, random or otherwise, of an entire sub-unit or identifiable segment of a command. Examples of a sub-unit include an entire department, division, or watch section; all newly reporting personnel; pay grade; or all personnel who surrender or are apprehended after an unauthorized absence. All newly reporting personnel shall be tested within 72 hours of arrival.
 - End of fiscal year testing - To ensure all Navy personnel are tested annually, commands shall review all personnel onboard who were not tested during the course of the year and conduct an end of fiscal year unit sweep for said personnel.
- **TESTING GOAL - USMC:** Every unit shall have an aggressive compulsory Urinalysis Testing Program, which ensures systematic screening of all Marines annually, regardless of rank, for the presence of

drugs. Units will test at least ten percent of their population monthly under the "IR" premise. All Marines reporting in from PCS and leave will be tested within 72 hours of their arrival.

24-HOUR UA & SUB-UNIT TESTING: Commands may establish policies to test all members returning from UAs longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from UAs in excess of 24 hours.

"FAILURE TO GO": Navy: If a member claims to be unable to provide a sample during the command's prescribed collection period, the member shall be turned over to the Master at Arms and remain under observation at all times until a sample is provided. If, after a period of 24 hours, the member still cannot provide a urine sample, member shall be examined by a military medical authority to investigate possibility of physiological or psychological problems. Examination should be completed the same day of the collection and documented in member's medical record. If failure to provide a sample is a chronic problem, member shall be sent to a Branch Medical Clinic (BMC) or Medical Treatment Facility (MTF) for further evaluation.

USMC: Should a Marine be unable to provide a specimen during the prescribed collection period or arrive after the collection period, the sample collection process will not be postponed. The coordinator will inform the Marine's Commanding Officer who will determine a collection time for those individuals. If a Marine submits less than 30 milliliters (one-third full), it is permissible to require the Marine to remain in a controlled area, under observation, and to drink fluids normally consumed in the course of daily activity (e.g., coffee, water, soda) until such time as the Marine is able to provide a specimen, or the balance of an incomplete specimen. In the case of an incomplete specimen, the unit coordinator will maintain custody of the incomplete specimen and designate an observer to witness that the bottle remains on the collection table until the given collection time has ended. If the member cannot provide the balance of the specimen in the same bottle at the end of the collection period, the bottle will be labeled, sealed by the individual and sent to the DoD certified laboratory with the collection. The urinalysis ledger will be annotated in the remarks that the specimen had, "minimum volume." No Marine Corps specimens will be discarded from a collection due to insufficient volume.

REFUSAL TO PROVIDE: A commissioned officer (but not CO, XO or Legal Officer) should give a direct order. If the member continues to refuse to provide a sample, then appropriate administrative and/or disciplinary action may be taken.

POSITIVE RESULTS: Message report from the NDSL is official notification of lab test results and constitutes authority to take administrative or disciplinary action. Use may be limited depending on the basis for testing. For example, command-directed fitness for duty urinalyses may not be used to punish a member nor used to give a member an OTH (although the member shall be processed for separation). Using all information available

(including self-admission, urinalysis results, SARP screening results, service record, and chain of command recommendations), the commanding officer must make an initial decision on whether the member's drug use was wrongful. Proceed as directed below and either:

- (1) Determine that the member is a drug abuser: Determine that the member's positive urinalysis was the result of knowing drug use (e.g., member was not prescribed medication that led to the positive urinalysis) and initiate mandatory ADSEP processing. Members diagnosed as drug dependent will be offered treatment prior to separation.
- (2) Determine that the member is not a drug abuser: Determine that the member's positive urinalysis was the result of unknowing drug use or a break in the chain of custody of the urine sample. In such cases, the positive urinalysis should not be considered a drug abuse incident and no DAAR submission is required. If the positive urinalysis is determined not to be a drug abuse incident, the command shall notify OPNAV (N135) and the command's immediate senior in command, echelon 2 or 3 via official correspondence of the circumstances that warranted such a determination. See appendix D for example of Determination of positive Urinalysis Letter. See **APPENDIX I** and **ADMINISTRATIVE DISCIPLINARY OPTIONS**.

NOTE: Only samples tested at a DoD certified lab or one of the three Navy Drug Labs can be used as evidence for punitive action or administrative discharge [see reference (a)].

STEROIDS:

All Navy and Marine Corps units should forward specimens for steroid testing to Navy Drug Screening Laboratory, San Diego (NDSL SD).

Navy Drug Screening Laboratory

34425 Farenholt Ave, Suite 40

San Diego, CA 92134-7040

Navy commands must request an authorization for steroid testing from the NADAP at BUPERS. (See POC information below.) Requests must be on command letterhead and should be included with the submitted specimen(s). Specimens submitted for steroid analysis will not be tested for the standard DoD drug test panel unless specifically requested by the submitting unit. A minimum of 60mL must be submitted for steroid testing. A minimum of 75 mL must be submitted if the command also requests the standard DoD test panel.

NDSL SD will forward specimens to the UCLA Olympic Analytical Laboratory for steroid testing. Upon completion of testing, the UCLA laboratory will send the steroid drug test results to NDSL SD. NDSL SD will transmit steroid drug test results, via encrypted email (PKI), to the service POC below. The service POC will transmit the steroid test result to the submitting unit.

Navy POC:

Danny Lara

MPT&E/N1351

Navy Alcohol and Drug Abuse Program

Urinalysis Program Specialist

E-mail: danilo.lara@navy.mil

Phone: (901) 874-4240, DSN 882

Fax: (901) 874-4228, DSN 882

Marine Corps POC:

Eric Hollins

Headquarters, Marine Corps

E-mail: eric.c.hollins@usmc.mil

Phone: (703) 784-9526, DSN 278

Fax: (703) 784-9825

HIV ISSUES

REFERENCES: (a) [SECNAVINST 5300.30](#) (series)
(b) [SECNAVINST 1850.4](#) (series)
(c) [NAVMC 2904](#)

NOTIFICATION OF POSITIVE SCREENING: Results must be provided to all medical/dental record holders.

ASSESSMENT INTERVIEW: Must be completed by cognizant medical health authority, and include counseling on risk factors, transmission factors, and blood donation.

LIMITATIONS ON USE OF HIV INFORMATION: Information gained during initial medical interviews cannot be used against the member in court-martial, NJP, involuntary administrative separation proceedings (for other than medical reasons), as a bar to re-enlistment, or a basis for adverse eval or fitrep marks.

CONFIDENTIALITY IS THE RULE: Handle HIV information with the highest degree of confidentiality. Information shall not be released to anyone unless there is a demonstrated need to know. Privacy Act and Health Insurance Accountability and Portability Act (HIPAA) considerations strictly apply.

WRITTEN PROTECTIVE ORDERS: Ensure that "safe sex" order has been issued by the appropriate medical authority.

ASSIGNMENT OF MEMBER: Military personnel who are HIV antibody positive and retained under the policy established in reference (a) shall be assigned within the CONUS or Hawaii to a unit not normally programmed for deployment and within 1 day's travel of a naval MTF designated by the Surgeon General.

VOLUNTARY SEPARATION: Member may request within 90 days after initial classification is completed (i.e., when member signs medical board report). Characterization is type warranted by service record (Honorable or General). Separation may be delayed up to 180 days after initial evaluation to minimize manning shortfalls.

INVOLUNTARY SEPARATION: Military personnel who are HIV antibody positive and who demonstrate any unfitting conditions of immunologic deficiency, neurologic deficiency, progressive clinical or laboratory abnormalities associated with HIV, or AIDS-defining condition will be processed through the Disability Retirement System under 10 U.S.C., chapter 61, as implemented by reference (b).

Reserve Note: Reservists with HIV are not eligible for periods of active duty beyond 30 days except under the conditions of mobilization and on SECNAV's decision. Reservists who are HIV positive and not on extended active duty are not eligible for medical evaluation in military treatment facilities.

MENTAL HEALTH EVALUATIONS (MHEs)

REFERENCES: (a) [DoD Dir 6490.1](#)
(b) [SECNAVINST 6320.24](#) (series)

POLICY: Members may only be referred to a mental health provider (MHP) for a MHE for legitimate mental health reasons, and not as reprisal. Members are entitled to exercise certain rights prior to such referrals. Do not refer a member for a MHE as a reprisal for making or preparing a lawful communication to a member of Congress, the chain of command, Inspector General (IG), or other appropriate person. Do not restrict a member from lawfully communicating with an IG, attorney, member of Congress, or other person about appropriateness of MHE referral. Violation of either of these principles may be punished under Art. 92, UCMJ.

RULES: References (a) and (b) provide guidance in referring a member for MHE. If appropriate, administratively process for separation IAW reference (c) and (d).

REFERRALS EXEMPTED FROM MHE REQUIREMENTS INCLUDE:

- Patient self-referrals.
- Referral to CAAC/DAPA, Family Advocacy.
- Referral to non-MHP for competence for duty exam.
- Referral as part of accession into a special community or duty.

CO RESPONSIBILITIES PRIOR TO REFERRAL:

- Provide member with a written notice of the referral. Sample notice provided in reference (b).
- Consult with Navy psychiatrist/psychologist Mental Health Professional (MHP)

MEMBER'S RIGHTS UPON REFERRAL:

- May not refuse MHE.
- May consult with a JAG for advice about redress.
- May submit allegation of improper referral to IG.
- May be evaluated by MHP of own choosing, if reasonably available.
- No person may restrict member's right to seek redress for referral.
- In situations other than emergencies, member shall have 2 business days before a MHE to meet with an attorney, IG, chaplain or other appropriate party.
- Prepare written memo documenting reasons for not complying and provide copies to member and MHP for inclusion in health record.

EMERGENCY CIRCUMSTANCES: If member is a "danger to self or others" referral may be made without prior consultation with MHP or written notice to the member. However, prepare written memo documenting the reason(s) for the emergency evaluation and rights paperwork for member.

MEMBER'S RIGHTS IF INVOLUNTARILY ADMITTED:

- Must be advised of nature, purpose and consequences of treatment.
- Right to contact friend, attorney, IG, or relative ASAP.
- Right to submit allegations to IG that MHE made as a reprisal.

- Right to evaluation within 24 hours to determine if continued hospitalization is justified.
- Right to notification of reasons for continued hospitalization.
- Right to have review within 72 hours by independent MHP appointed to determine appropriateness of continued hospitalization (right to attorney at the 72 hour review).

MENTAL HEALTH PROFESSIONAL DUTIES:

- Advise member of purpose, nature and likely consequences of MHE.
- Report improper MHE referrals to medical chain of command who will report same to offending officer's superiors and the local IG.

ALL ALLEGATIONS OF IMPROPER REFERRAL ARE INVESTIGATED BY NAVY IG AND REPORTED TO DOD IG.

USMCR commands should seek guidance from the MARFORRES Staff Judge Advocate.

Section VI: SEXUAL HARASSMENT, FRATERNIZATION & HAZING

SEXUAL HARASSMENT INCIDENT

REFERENCES: (a) [SECNAVINST 5300.26D](#) (series)
(b) [OPNAVINST 5354.1F](#) (series)
(c) [Article 1166, U.S. Navy Regulations](#)
(d) [NAVPERS 5354/2 Formal Complaint Form](#)
(e) NAVPERS 15620 Informal Resolution System
(f) [MCO P5354.1D](#) (series)
(g) [MILPERSMAN 1910-233](#)
(h) [MCO P1900.16F](#) (MARCORSEPMAN) [6210](#) (series)

POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 NAVY BLUE for major incidents. OPREP-3 Unit SITREPS for minor incidents.
- Major criminal *REPORTING* offenses to NCIS. See *NCIS INCIDENT REPORTING*
- Violent crime message.
- Incidents involving sexual assaults. See *VICTIM/WITNESS*.
- Incidents involving officers IAW TYCOM/ECHELON II requirements.

WHAT IS SEXUAL HARASSMENT? Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) made a term or condition of a person's job, pay, or career; (2) used as a basis for a job decision affecting that person; or, (3) interferes with an individual's work performance or creates a hostile or offensive working environment. Sexual harassment is a gender neutral concept.

INFORMAL RESOLUTION: Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. [See reference (e)].

FORMAL COMPLAINT: Use reference (d) "Formal Complaint Form".

INVESTIGATIVE REQUIREMENTS: All formal complaints of sexual harassment will be processed according to the following procedures:

- **Within 24 hours** of receipt of the complaint at the alleged offender's command, the complaint must be presented to the Commanding Officer. Advocates (duties of which are laid out in enclosure (8) of reference (b)) shall be assigned to each complainant, alleged offender and any witness to ensure they are informed about complaint processing. If the complainant, alleged offender, or witness does not desire the services of an advocate, they must state in writing and/or annotate on NAVPERS 5354/2 or by memo for the record
- **Within 72 hours:** Initiate an investigation after receipt of the complaint. A naval message describing the situation, using the format found in OPNAVINST 3100.6J (NOTAL) augmented by enclosure (6) of reference

(b), must be sent to General Courts-Martial Authority (GCMA) and information addressees, command's Echelon 2 commander, ISIC, CNO WASHINGTON DC//NOOE//, and NAVY EO MILLINGTON TN//JJJ//.

- Marine personnel shall notify the GCMCA that a complaint has been received and make every effort to initiate investigation within 72 hours.
- **Within 14 days:** Complete investigation, or file a progress report **within 20 days** of commencement and every 14 days thereafter. File a final report with the GCMCA, including the results of the investigation and whether or not any administrative or disciplinary action was taken (if disciplinary action was taken, the actual punishment awarded should not be placed in the message). See references (b), (d), and (h).

PREVENT REPRISALS: Remove the alleged offender from the work space if there is reasonable possibility of further sexual harassment or reprisal.

COMPLAINANT/VICTIM ASSISTANCE: See *VICTIM/WITNESS*.

PRIVACY ACT CONSIDERATIONS: Maintain the confidentiality of the personal information of all parties involved. See *PRIVACY ACT*.

MENTAL HEALTH EVALUATION: Do not order psychiatric evaluation of the complainant or alleged offender unless the requirements of the DoD mental health instruction have been met. See *MENTAL HEALTH EVALUATION*.

LEVEL OF INVESTIGATION: The CO determines the level of investigation based on the seriousness, validity and magnitude of the incident. Ensure that the investigating officer (IO) is neutral and qualified. The IO should be senior to the complainant and the alleged offender. Consider an outside investigator if the command investigation would have the appearance of being partial to either complainant or alleged offender. Coordinate all efforts with the command legal advisor. If complainant and alleged offender are from different commands, the CO of the alleged offender has the responsibility to conduct the investigation.

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action when appropriate. Focus remedies on solving the problem. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

MANDATORY ADMINISTRATIVE DISCHARGE PROCESSING:

Per reference (g), COs must process for separation if the sexual harassment involves:

- Actions, threats or attempts to influence another's career or job in exchange for sexual favors; or Physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge. See *Administrative Separations*.

FRATERNIZATION INCIDENT

REFERENCES: (a) [OPNAVINST 5370.2C](#) (series)
(b) [Marine Corps Manual 1100.4](#)
(c) [Article 1165, U.S. Navy Regulations](#)
(d) UCMJ, Article 134

BACKGROUND: Unduly familiar personal relationships between seniors and subordinates are contrary to Naval custom as they undermine the respect for authority that is essential to the Naval Service's ability to accomplish its mission. Fraternization is prohibited and punishable under the UCMJ. Being in a direct senior-subordinate supervisory relationship or in the same chain-of command is not a prerequisite for fraternization.

PROHIBITED RELATIONSHIPS (immediately presumed to be prejudicial to good order and discipline):

Officer/Enlisted: Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank. (USN and USMC)

Chief Petty Officer/Junior Enlisted: Personal relationships between chief petty officers and junior personnel (E-1 to E-6), who are assigned to the same command, that are unduly familiar and that do not respect the differences between grade or rank. (USN)

E-1 to E-6 Enlisted Members of Different Pay Grades: Personal relationships between two enlisted members, both of which are in pay grade E-1 to E-6, are prohibited if:

- They are unduly familiar to the extent they do not respect differences in pay grade, AND
- Are prejudicial to good order & discipline

Between officers: Same as for E-1 to E-6 Enlisted Members of Different Pay Grades.

Staff and Instructor/Student Personnel: Personal relationships between staff or instructor members and student personnel within training commands that do not respect differences in grade, rank, or the staff/student relationship.

Recruiter/Recruit and Applicant: Personal relationships between recruiters and recruits or applicants that do not respect special relationship between them. Such relationships are prejudicial to good order and discipline. These relationships are strictly prohibited in the USMC.

HAZING PREVENTION/INCIDENT

REFERENCES: (a) [SECNAVINST 1610.2A](#) (series)
(b) [OPNAVINST 3100.6H](#) (series)
(c) [MCO 1700.28](#) (series)
(d) [OPNAVINST 3120.32](#), para. 510.36
(e) ALMAR 045/03
(f) [SECNAVINST 5800.11B](#)

COMMAND POLICY: Must be regularly emphasized to all hands.

PREVENTION: Requires continuous education and awareness from command leadership. Use the definition and specific examples below. The listing is not all inclusive and other known examples should be added to the list.

HAZING DEFINITION: Hazing is defined as any conduct whereby a military member or members, regardless of service or rank, without proper authority causes another military member or members, regardless of service or rank, to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator. Whether an individual consents or volunteers is immaterial; no service member may consent to acts of hazing being committed upon them.

SPECIFIC EXAMPLES THAT ARE CLEARLY PROHIBITED: “Tacking on” promotions or warfare pins; initiations that have not been approved and are unsupervised by the chain of command; handcuffing members to fixed or movable objects; taping or tying member’s arms or legs; forced/non-consensual cutting or shaving of hair; forced or non-consensual removal of clothing; “red bellies”; placing or pouring a liquid substance or foreign substance (i.e. grease or shoe polish) on a person or their property; requiring a person to consume substances or food not normally prepared or suitable for consumption; sabotaging personal property of another to cause even minor injury or damage; any horseplay or minor assault upon the person of another; or any other act that could even remotely subject a person to injury, ridicule, or degradation.

HAZING DOES NOT INCLUDE: Command-authorized or operational activities; the requisite training to prepare for such missions or operations; administrative corrective measures; extra military instruction; athletics events, command-authorized physical training, contests or competitions; and other similar activities that are authorized by the chain of command.

INITIATIONS AND SPECIAL CEREMONIES: Must be approved by the chain of command. Specific guidance is contained in *reference (d)*:

- CO or his/her direct representative shall personally be involved in planning or execution.

- Glamorization of alcohol and alcohol abuse by event participants and guests shall not be tolerated.
- Sexually suggestive activities, props, costumes, skits, gags, or gifts are prohibited.
- Personal, ethnic, and religious beliefs of those in attendance shall be respected.
- There will be no coercion of Navy members to participate. Any participation by principals or guests shall be strictly voluntary.
- Proper medical screening of participants (when appropriate) and compliance with applicable health, safety, and environmental regulations shall be part of event planning.

INVESTIGATION: Commands must investigate within 24 hours of incident. An update via SITREP must be sent every 30 days until final action taken.

SUPPORT THE VICTIM: Hazing victims/witnesses shall be advised of their rights immediately and offered legal advice, medical assistance, and counseling as necessary. Commanders shall ensure that victims/witnesses are advised of and given access to victim/witness advocacy services in accordance with *reference (f)*.

REPORTING REQUIREMENTS: Substantiated incidents of hazing must be reported via OPREP-3 NAVY BLUE to CNO or CMC [see *references (a), (b), and (c)*].

DISCIPLINARY OR ADMINISTRATIVE ACTION: Take timely and tailored action as appropriate.

Section VII: FREEDOM OF EXPRESSION AND GRIEVANCE PROCEDURES

FREEDOM OF EXPRESSION

REFERENCES: (a) [DoD Dir 1325.6](#)

- (b) [SECNAVINST 5720.44B](#) (series)
- (c) [DoD Dir 1300.17](#)
- (d) [SECNAVINST 1730.7](#) (series)
- (e) [DOD Inst 4105.70](#)
- (f) [OPNAVINST 1620.2A/MCO 1620.2D](#) (series)
- (g) [OPNAVINST 1620.1](#) (series)
- (h) [DoD Dir 1344.10](#)
- (i) [NAVADMIN 110/06\(i\), MARADMIN 198/07](#)

CO'S BALANCING TEST: Constitutional rights involving freedom of expression should be preserved to maximum extent possible, consistent with mission accomplishment, security and good order and discipline. [See reference (a).]

NO CONTEMPTUOUS WORDS: Article 88 UCMJ prohibits officers from being disrespectful to senior governmental leaders (i.e. President, Vice President, Congress, SECDEF, SECNAV, SECARMY, SECUSAF, etc...).

PORNOGRAPHY:

- Private possession can be prohibited overseas. In CONUS, private possession is generally permissible (except child pornography).
- Display and distribution can be controlled.
- No sexually explicit material may be offered for sale or rental on property under the DoD jurisdiction, and no member of the Armed Forces or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material. [See reference (e)].

HANDBILLS, POSTERS, LEAFLETS, NEWSLETTERS, PAPERS,

NOTICES: CO can and should require prior approval before distribution. Apply the balancing test stated above and rule of equal treatment.

MANDATORY PAO/SECURITY REVIEW: Required for any publication written by military member that "pertains to military matters." [See reference (b)].

ON-BASE "GATHERINGS": Shall be prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Apply the rule of equal treatment.

OFF-BASE "GATHERINGS": Attendance may be prohibited if:

- The service member is on duty;
- In a foreign country, in a gathering where the march is illegal, or if violence is likely at the gathering;
- Moreover, a service member may be prohibited from wearing a uniform at the gathering.

OFF-LIMITS: A CO may declare places temporarily “off-limits” **in emergencies** until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for declaring places off limits: clear danger to loyalty, morale, good order and discipline; interference with mission accomplishment; adverse effect upon health, safety, welfare or morals; or engages in discriminatory practices. Overseas, a CO has much greater discretion to place areas off-limits, checking with ISIC if intent is to place permanently off-limits.

NO MILITARY UNIONS, STRIKES SLOWDOWNS, OR PICKETING. (See Title 10 U.S.C. Chap 49 Sec. 976)

MEMBERSHIP IN SUPREMATIC OR EXTREMIST GROUPS:

“Active” participation in such organizations or conduct is prohibited. Active participation includes: publicly demonstrating or rallying, fundraising, recruiting and training members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by command to be detrimental to good order, discipline, or mission accomplishment. Mandatory processing for substantiated cases. See *ADMINISTRATIVE SEPARATIONS*.

RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES: See *REQUEST MAST/ARTICLE 138 COMPLAINT and CONGRESSIONAL INQUIRIES*.

RELIGION: Policy is to accommodate practice of religion to the greatest extent possible. See reference (d). See *POLITICAL ACTIVITIES*.

TATTOO POLICY:

USN:

- No tattoos on face, neck, scalp, head
- Everywhere else:
 - Prejudicial to good order/disc or service discrediting – prohibited (sexually explicit, discrimination due to ethnicity, Nat'l origin, gender, racial, or religious)
 - Supremacist or gang-related – prohibited

USMC:

- No tattoos on head or neck
- No “sleeve tattoos” (covers/almost covers entire arm or leg)
- No “half-sleeve” or “quarter-sleeve” tattoos (covers/almost covers above or below elbow or knee) visible to the eye when wearing standard PT gear
- No service discrediting tattoos – sexist, racist, vulgar, anti-American, anti-social, gang-related, or extremist group

Member may be “grandfathered” in if tattoo acquired prior to promulgation of policy, but ensure page 11/13 entry is made. See references (h) and (i) for more guidance.

REQUEST MAST/REDRESS OF WRONGS/ART. 138 UCMJ

REFERENCES: (a) [Navy Regulations, Articles 1150, 1156](#)

- (b) UCMJ, Article 138
- (c) [JAGMAN, Chapter III](#)
- (d) [MCO 1700.23F](#) (series)
- (e) [NAVMC Directive 1700.23F](#) (series)
- (f) UCMJ, Article 138

REQUEST MAST: Members of the Naval Service have the right to communicate directly with the CO at a proper time and place determined by the CO. No one may force a member to reveal matter they wish to discuss privately with CO.

- CO's should encourage Request Mast in order to resolve matters at the lowest level. Once a chit for request mast is submitted, only the individual submitting the chit may withdraw the chit. If withdrawn, the reason should be documented and preserved.
- Request Mast is an individual right. Navy Regulation Article 1153 prohibits members from joining together to protest or complain.
- USMC: A Marine may request mast with any officer in his chain of command up to the Commanding General.

NAVY REGULATIONS ARTICLE 1150 – REDRESS OF WRONGS:

- Formal complaint that may be filed against any superior. (Complaints against the CO are filed under Article 138 only after the complainant has requested redress from the CO).
- If the superior is in the same chain of command, the CO should handle through Request Mast procedures. If the matter is resolved no report to higher authority is required. If the complainant considers the resolution unjust the complainant may file an Article 138 complaint against the CO.
- If the superior is not in the same chain of command, the complaint shall be forwarded via the complainant's CO, the respondent, the respondent's CO, and to the officer exercising General Court-Martial Convening Authority (GCMCA) over the respondent. The GCMCA is required to inquire into the matter.

UCMJ ARTICLE 138 COMPLAINTS: Made against a CO after a request for redress has been denied. Member has 90 days to submit complaint after discovery of alleged wrong.

Must be endorsed and forwarded within 30 days to the officer exercising GCMCA over the CO and, after investigation (regardless of resolution), must be forwarded to SECNAV.

A complainant may withdraw a complaint at any time but it must be in writing and forwarded up the chain of command if the complaint has already been forwarded. If the complaint has not been endorsed or forwarded the CO should document and preserve the withdrawal.

CHECKLIST FOR GCMCA REVIEW OF ARTICLE 138 COMPLAINTS:

See Appendix F.

HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT

REFERENCES: (a) [SECNAVINST 5370.5B](#) (series)
(b) [SECNAVINST 5370.7](#) (series)
(c) [DOD Directive 7050.06](#)
(d) [MCO 5370.8](#)

DOD FRAUD, WASTE, AND ABUSE HOTLINE (1-800-424-9098).

Navy IG (1-800-522-3451) is the “eyes and ears” of SECNAV, CNO and CMC.

- Echelon II Commanders are responsible for written internal procedures for processing hotline referrals at appropriate levels within chain of command.
- Mandatory requirement to post information on Navy/DoD Hotline programs on command bulletin boards [see reference (a)].
- Encourage and support reporting of fraud, waste and abuse throughout all levels of command; military and civilian.

INVESTIGATION PROCEDURES: If command is tasked with conducting an investigation, CO must ensure standards of independence, completeness, timeliness and accountability are met.

- Assign impartial investigator, outside and independent of the operation specified in the complaint.
- Reports cannot raise unanswered questions.
- IG due date in tasking letter must be met.
- Take proportionate remedial measures in form of disciplinary/administrative/educational action if needed to correct deficiency.
- Retain EVERYTHING (notes, papers, files) for 2 years.
- Use Navy IG Investigations Manual or Marine Corps IG Assistance and Investigations Manual as a guide for investigation.
- Confidentiality of informant is a must.
- NO REPRISAL can ever be taken against a known/suspected informant.

WHISTLEBLOWER PROTECTION ACT: Prohibits reprisal or taking or threatening to take any unfavorable personnel action or withholding or threatening to withhold any favorable personnel action, because a member makes or prepares to make a lawful communication to a member of Congress, an IG, or any other person designated by regulations or established administrative procedures for such communications. 10 U.S.C. 1034.

Contents of reference (b) MUST be published on command bulletin boards.

Violation of the Act is a crime punishable under the UCMJ and a basis for disciplinary action against civilian employees.

[See MENTAL HEALTH EVALUATIONS].

CONGRESSIONAL INQUIRIES

REFERENCES: (a) [MILPERSMAN 5216-010](#)

(b) [SECNAV 5216.5](#) (series)

(c) [Navy Regulations, Article 1155](#)

(d) [SECNAVINST 5730.5J](#) (series)

(e) JAGMAN

RIGHT TO COMMUNICATE: No person may restrict any member from communicating with Congress in the member's personal or private capacity.

PROTECTION FOR "WHISTLEBLOWERS": See *HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT*.

PSYCHIATRIC EVALUATION: Do not refer a member for a mental health evaluation as reprisal for initiating a Congressional inquiry. See *MENTAL HEALTH EVALUATIONS*.

PRIVACY ACT CONCERN: Ensure that any personal information about a member included in the response is releasable information. (If the inquiry is regarding a specific service member, privacy act waivers must be obtained by the command prior to sending a response. See appendix i of reference (e))

CORRESPONDENCE:

- Each Congressional inquiry should receive a prompt, courteous, and complete reply.
- The reply should be correct even though the nature of the reply may be unfavorable.
- A final or interim reply must be sent within five (5) workdays of receipt.

USN: DON activities contacted directly by Members of Congress are responsible for replying directly on routine and non-policy matters. Copies of both incoming and outgoing correspondence resulting from direct contact with Members of Congress shall be provided to the CLA, or Navy

Appropriations Matters Office (FMBE) as appropriate.

USMC: All Congressional Inquiries should be immediately forwarded by fax to the Office of Legislative Affairs (OLA(C)),

(703) 614-4172/4768 or DSN 224-4172.

INFORMING CHAIN OF COMMAND: Check Senior Command and local instructions for reporting requirements and requirements for providing copies of responses.

FREEDOM OF INFORMATION ACT (FOIA)

REFERENCES: (a) [JAGMAN, Chapter V](#)
(b) [SECNAVINST 5720.42F](#) (series)
(c) [SECNAVINST 5820.8A](#) (series)
(e) [32 CFR part 701](#)
(d) [5 USC § 552](#)

RESOURCES: Navy FOIA online [www.foia.navy.mil] USMC FOIA Online [<http://hqinet001.hqmc.usmc.mil/FOIA/index.htm>]

ACCESS TO RECORDS: FOIA gives all persons (including foreign citizens and governments) a right to access Government “agency records” unless such records are specifically exempted from disclosure. Records include information maintained in an electronic format. Requestors of information must indicate that they are seeking information pursuant to FOIA.

EXEMPTIONS: If you have any question over whether a record must be released, forward the FOIA request and the documents in issue to the Initial Denial Authority (IDA). Some of the specific exemptions under FOIA include:

- Classified information;
- Purely internal rules and procedures;
- Memos containing internal advice and recommendations;
- Records which contain personal and private information (e.g., medical and service records; mailing lists containing names and/or addresses of military personnel or employees, regardless of their duties, of the Department of Defense, etc...);
- Law enforcement records.

INITIAL DENIAL AUTHORITIES (IDA'S): Generally, only an IDA may deny release of a properly requested record. IDA's are typically Flag/General Officers or officers exercising General Court-Martial Convening Authority.

FEES: Requestors may be charged fees for production of materials. Details as to fees and fee waivers are set out in reference (b), enclosure (3). Note that typically a total of less than \$15.00 fee is waived.

TIME LIMITS: Must respond to FOIA requests within 20 working days. A command may obtain an informal extension from the requestor, or a formal request from the IDA.

SPECIAL RECORDS: Certain FOIA requests require special handling. Requests for the following must be forwarded to the appropriate custodian of the record:

- NCIS reports;
- IG reports;
- Court-martial records;
- Mishap and safety reports;
- Nuclear information;
- Medical quality assurance reports.

ANNUAL REPORTING & TRACKING: FOIA action officers must track all FOIA cases and all reimbursable fees (record search and review time and duplication costs). Use DD Form 2086 for all FOIA requests [*See reference (b)*]. Such records will also help in submitting annual FOIA reports. Echelon II IDA's are required to collect annual FOIA reports NLT 25 October each year.

REQUESTS FOR INFO RELATED TO LITIGATION: If the FOIA request (or any other request for information) is believed to be related to litigation in which the government is or might become a party, notify your servicing RLSO, SJA and OJAG (Code 15) at DSN 325-5450 or (202) 685-5450. [*See reference (c)*].

PRIVACY ACT & PERSONALLY-IDENTIFIABLE INFORMATION (PII)

REFERENCES: (a) [JAGMAN](#), Chapter V
(b) [SECNAVINST 5211.5E](#) (series)
(c) [DON CIO MSG 171952Z](#) APR 07
(d) DON CIO MSG 301540Z NOV 06
(e) [JAGMAN](#), Chapter II
(f) MARADMIN 162/10

RESOURCES: Navy Privacy Act on-line site: <http://privacy.navy.mil> USMC guidance at reference (f)

PURPOSE: The Privacy Act limits the government in collecting personal information that will be stored in a “system of records,” and permits individuals access to information in a “system of records” that contains personal information about them, unless specifically exempted from disclosure.

DENIAL AUTHORITIES: Only a proper “Denial Authority” may deny release of a properly requested record. “Denial Authorities” are typically Flag/General Officers or officers exercising General Courts-Martial Convening Authority (GCMCA).

PRIVACY ACT WARNINGS: Required when someone from the command is requesting “personal information” (e.g., SSN) which will then be stored in a “system of records” (e.g., medical or personnel files, training records, JAGMAN investigations, etc...). [See reference (e) for sample warning forms].

INDIVIDUAL ACCESS TO FILES: In most cases, an individual may access any record that contains personal information about them (e.g., medical and personnel files, unit punishment book, etc...). There are some exceptions to this rule.

THIRD PARTY ACCESS TO FILES: In most cases, a third party may not access any record that contains personal information about someone else. There are some exceptions, including:

- Internal release within an agency (“need to know”).
- “Routine use” as defined in the system’s notice (located at privacy.navy.mil).
- Statistical research.
- Law enforcement activity.
- Congressional inquiries (where made on behalf of individual).

PRIVACY ACT REQUESTS: Privacy Act requests are to be acknowledged within 10 working days by the system manager and be acted upon within 30 working days. Requesters can appeal denials within 60 calendar days to the denial authority [see reference (b)].

TRACKING: For each record disclosed to a party outside DoD in response to a Privacy Act request, document such release with a "Disclosure Accounting Form" – OPNAV 5211/9, which is contained in reference (b) and available at the navy privacy website.

Section VIII: INTERACTIONS WITH CIVILIANS

JURY DUTY

REFERENCES: (a) [SECNAVINST 5822.2](#) (series)
(b) [28 U.S.C. 1863](#)
(c) [10 U.S.C. 982](#)

AUTOMATIC FEDERAL COURT EXEMPTIONS: Reference (b) exempts all active duty members from serving on federal juries.

AUTOMATIC STATE COURT EXEMPTIONS: Flag officers, commanding officers, members assigned to operating forces; those in a training status; and those outside the continental United States are exempt from serving on state juries [see reference (a)].

DISCRETIONARY STATE COURT EXEMPTIONS: Officers with authority to convene special courts-martial may exempt members from state/local juries if jury duty would:

- Unreasonably interfere with performance of their duties;
- Adversely affect readiness of command as a whole.

HOW TO EXEMPT: CO should sign written letter to appropriate state official (normally clerk of courts) exempting member.

OIC OR CO WITHOUT AUTHORITY TO CONVENE SPECIAL COURTS-MARTIAL: Should forward request with a recommendation and justification as soon as possible

MEMBERS AVAILABLE FOR JURY DUTY: Should not be charged leave or lose any entitlement.

FEES AND REIMBURSEMENTS: All fees accrued to members for jury duty are payable to the U.S. Treasury and may not be retained by the member. Members are entitled to, and may retain, any reimbursement from the state or local jury authority for actual expenses incurred in the performance of jury duty.

LAW ENFORCEMENT – CIVILIAN JURISDICTION

REFERENCES: (a) [10 U.S.C. 814](#)
(b) [OPNAVINST 5100.12](#) (series)
(c) [18 U.S.C. 1382](#)
(d) [Navy Regulations, Article 0822](#)

THREE TYPES OF JURISDICTION AND CIVILIAN MISCONDUCT:

(Installations may have different types in different areas.)

EXCLUSIVE: Federal government has exclusive authority to make and enforce local laws. Civilian misconduct may be prosecuted in federal court. Local SJA or RLSO will have a Special Assistant U.S. Attorney to prosecute. Minor driving infractions may be handled in a base traffic court. [See reference (b)].

CONCURRENT: State and federal governments have equal authority to make and enforce local laws. DON or civilian law enforcement may respond and either may pursue prosecution. Each base or installation MUST have a memorandum of understanding with local civilian law enforcement agencies on these issues.

PROPRIETARY: Federal government is merely a tenant on the land and retains no power to make or enforce local laws. State law controls. State law enforcement normally makes all arrests, and prosecution will be in state courts. Active duty may also be prosecuted in state court for traffic violations and other crimes but will not necessarily preclude punishment under UCMJ for same offense.

TYPE OF JURISDICTION DOES NOT AFFECT ENFORCEMENT OF UCMJ
OVER MILITARY PERSONNEL: UCMJ is applicable in all places and at all times to all active duty. On installations with concurrent or proprietary jurisdiction, however, a violation of the UCMJ might also be a violation of local law, which means military personnel could be tried in a state court.

DETENTION OF CIVILIAN FOR DELIVERY TO CIVILIAN AUTHORITIES: Regardless of the type of jurisdiction, COs may not confine civilians but may “detain” for a reasonable time until civilian law enforcement assumes physical custody of the individual. Notify NCIS immediately. See *SERVICE OF PROCESS/SUBPOENAS*.

DELIVERY OF NAVAL PERSONNEL TO CIVILIAN AUTHORITIES: As per reference (a), under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

BARRING OF CIVILIANS: Civilians who commit misconduct or who present a threat to good order and discipline on the base may be barred by the base CO from entering the installation. Installation CO must issue a written order barring the individual from the installation. Those who violate the order may be tried in federal court, fined, and imprisoned. [See reference (c)].

LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES

REFERENCES: (a) [18 U.S.C. 1385](#)
(b) [SECNAVINST 5820.7](#) (series)
(c) [JAGMAN](#), Chapter VI

REPORTING REQUIREMENT: If DON assets are requested, permission must come from SECNAV or SECNAV designee. If approved, cost recovery for DON is required.

POSSE COMITATUS ACT (PCA): The willful use of the Army or Air Force to execute civilian laws, without authorization from the Constitution or Congress, is a criminal offense.

DOD/DON POLICY: The PCA is applicable to USN and USMC. The PCA is not applicable to the Coast Guard.

EXAMPLES OF PROHIBITED ACTIVITIES:

DON personnel may not assist civilian law enforcement by participating in:

- The interdiction of a vehicle, vessel, or aircraft.
- A search or seizure.
- An arrest, apprehension, stop and frisk, or similar activity.
- Surveillance or pursuit of individuals.
- Investigations, interrogations, undercover operations.

EXAMPLES OF PERMITTED ACTIVITIES:

- Investigations of violations of the UCMJ.
- Protection of classified information or equipment.
- Use of equipment/facilities with appropriate approval.
- Suppression of insurrection/domestic violence.
- Protection of President; Vice President, dignitaries.
- Maintenance of loaned equipment.
- Training and expert advice on operation of equipment.
- Support necessary during chemical/biological emergencies.

APPLICATION: PCA only applies to active duty in a duty status or when acting in an official capacity.

CONFINEMENT OF MILITARY MEMBER FOR DELIVERY TO CIVILIAN

AUTHORITIES: Service member may be held in confinement if necessary under circumstances but only for a reasonable period to facilitate delivery to the civilians. Civilians **MUST** have a warrant or reasonable belief that the offense was committed by the member.

ARREST WARRANTS FOR ACTIVE DUTY MEMBERS: [see reference (c) for detailed guidance].

Federal warrant: Upon display of credentials and warrant, turn over member.

In-State warrant: Upon display of credentials and warrant, turn over member. Ensure execution of delivery agreement.

Out-of-state warrant: Turn over member only if member waives extradition. (Member has right to consult with a lawyer before waiving.) Ensure execution of delivery agreement.

Foreign arrest warrant: Notify SJA immediately. DO NOT release until directed by higher authority.

IF CO REFUSES TO ALLOW ARREST: Inform OJAG (Code14) DSN 325-5450 or (202) 685-5450 immediately.

REPOSESSION OF PERSONAL PROPERTY

REFERENCES: (a) [JAGMAN, Section 0622](#)

DISCRETION OF THE INSTALLATION CO: Repossession of personal property belonging to military personnel or their dependents located on a naval installation may be permitted at the discretion of the installation CO. The “repo-agent” must obtain permission from the CO in advance. The installation SJA should review the documents.

LOCAL INSTRUCTIONS OR DIRECTIVES: Should be implemented to ensure standard procedures are followed.

INFORMAL INQUIRY BEFORE REPOSESSION IS ALLOWED:

Contact the member to determine if he/she is aware of the problem, and rule out administrative error (e.g., an allotment problem).

IF REPOSESSION IS TO BE ALLOWED: The owner of the property should be afforded the opportunity to voluntarily relinquish the property. The member should be referred to a Legal Assistance attorney.

NO BREACH OF THE PEACE: Ensure that the repossession is carried out in the manner prescribed by the CO. Contact base security and have them on the scene to avoid any problems or altercations.

SERVICE OF PROCESS/SUBPOENAS

REFERENCES: (a) [JAGMAN, Chapter VI](#)
(b) [SECNAVINST 5820.8](#) (series)
(c) [MCO P5800.16 \(LEGADMINMAN\)](#) Chapter 9 (series)
(d) [MILPERSMAN 1050](#)

CO's CONSENT/CO's PRESENCE: Service of process (a summons to appear in court as a party) will not be permitted within the command without the CO's consent. Where practicable, the member should be served within the CO's presence or that of another designated officer.

IMMEDIATELY ADVISE MEMBER TO SEEK LEGAL COUNSEL.

LOCAL STATE COURT OR FEDERAL COURT SERVICE OF PROCESS:

CO should permit service upon members, civilian employees or dependents except in unusual cases when compliance would prejudice the public interest. Vessels in territorial waters of a state should be considered to be within the jurisdiction of that state for purposes of service of process.

COURTS LOCATED OUT OF STATE: Service of process shall normally be permitted under the same conditions as in-state service, but the CO shall ensure that the member is advised that he/she need not accept service.

SERVICE BY OUT-OF-STATE MAIL: If member refuses to accept, the refusal should be noted and the documents returned to sender.

FOREIGN COURT/OVERSEAS SERVICE OF PROCESS:

Normally addressed by the applicable Status of Forces Agreement (SOFA). Contact overseas area coordinator SJA or base/installation SJA immediately.

RELATION TO OFFICIAL DUTIES: When service of process upon a member or civilian employee arises from the performance of his/her official duties, ensure that the member is notified of his/her applicable rights IAW section 0616 of reference (a) and that copies of the process and pleadings along with a description of the pertinent facts are provided to the SJA for the GCMCA for immediate notification to JAG (Code 14) at DSN 325-5450 or (202) 685-5450.

NORMALLY GRANT LEAVE OR LIBERTY: Personnel who accept or are served with process should normally be granted leave or liberty to appear in court unless their absence would be prejudicial to Naval service. [See reference (d)].

SERVICE OF SUBPOENAS: (Court orders requiring a person to testify as a witness) shall be handled in the same manner as service of process with the following exceptions:

- If service member is subpoenaed as a witness representing the Federal Government, the member will be issued TAD orders.

- If service member is subpoenaed as a witness on behalf of the accused in federal court, no-cost permissive orders should be issued unless the member's absence would prejudice the command.
- If service member is subpoenaed as a witness on behalf of a party to a civil or state criminal action with no Federal Government interest, leave or liberty should be granted if not prejudicial to command. (No-cost permissive orders shall be issued if witness is subpoenaed because of performance of official duties).

REQUESTS FOR STATEMENTS AND/OR INTERVIEWS WITH SERVICE MEMBERS BY PARTIES TO PRIVATE LITIGATION:

Notify the cognizant SJA for the GCMCA. [See references (a) and (b)].

ARREST WARRANTS: See *LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES*.

Section IX: OUTSIDE CONUS

CUSTOMS

REFERENCES: (a) [JAGMAN, Chapter XI](#)
(b) [Navy Regulations, Article 0860](#)

PRIOR TO DEPLOYMENT: Ensure an adequate number of personnel are trained to act as military custom inspectors and adequate supply of forms are onboard.

CO RESPONSIBILITIES FOR SHIP ARRIVAL:

- Must notify Customs District Director in advance upon return to U.S. customs territory at port of first entry.
- Must facilitate customs and immigration inspection and ensure proper immigration clearance for any military or civilian passenger.
- Must distribute customs declarations to all passengers and crew.
- Must file a cargo declaration within 48 hours if carrying anything other than U.S. property and passengers on official business.

AIRCRAFT COMMANDER RESPONSIBILITIES FOR ARRIVAL:

- Upon entering U.S. customs territory provide advance notice to Customs District Director at place of first landing.
- Notification may be made by radio, telephone, or other direct means; or through FAA flight notification procedures.
- Must distribute declarations to all passengers and crew and facilitate inspection.

FOREIGN CLAIMS

REFERENCES: (a) [JAGMAN Chapter VIII](#)

PURPOSE & SCOPE: Promote friendly relations with foreign countries by promptly paying meritorious claims for death, injury, property damage or other loss caused by U.S. military members. The claim must arise outside the U.S. and its territories, possessions or commonwealths.

VALID CLAIMANT: Inhabitants of foreign countries including persons, corporations or other government or business entities and U.S. citizens living abroad. Does not include tourist, travelers, U.S. service members or their dependents.

EXAMPLES OF CLAIMS NOT COVERED: Combatant claims, admiralty incident, and patent infringement, claims of insurers, purely contractual claims of individuals or claims for paternity.

ESTABLISHMENT OF CLAIMS COMMISSIONS: COs should appoint responsible officers to adjudicate foreign claims. TYCOM directives may limit the authority to settle claims or require Judge Advocate approval. Foreign claims officers must diligently follow the requirement of reference (a) when investigating, documenting, adjudicating and reporting incidents.

PRIVATE SETTLEMENT: When a wrongdoer or group of individuals is identified as having committed a negligent act or an act outside the scope of duty, private settlement and voluntary restitution is an option that should be considered. Private settlement must be voluntary on the part of the member(s). The foreign claims officer should thoroughly document the incident in the same manner as a foreign claim, and *ensure that a final settlement agreement and release is signed by the member and the claimant* to prevent additional or supplementary claims for the same damage.

FUNDING FOREIGN CLAIMS: [see reference (a) for funding source information].

FOREIGN CRIMINAL JURISDICTION/SOFA

REFERENCES: (a) [JAGMAN, Sections 0609 and 1010](#)
(b) [Navy Regulations, Article 0828](#)
(c) [MCO P1900.16](#)
(d) Fleet Deployment/Legal Manuals
(e) Status of Forces Agreements (SOFA's)

APPREHENSION OF U.S. MILITARY PERSONNEL BY FOREIGN

AUTHORITIES: Report via OPREP/SITREP. All efforts should be made at the local level to secure the member's release pending final resolution of judicial proceedings. Members not released should be encouraged to notify parents and/or spouse or allow command to notify. Upon release members should be given complete medical examination and should provide sworn statement concerning conditions of confinement.

IMPORTANT CONTACTS: The following individuals may be able to assist: Consulate/Embassy/United States Defense Attaché Office (USDAO) country representatives, NCIS regional offices, husbanding agents and Staff Judge Advocates.

SOFA COMPLIANCE: In countries where the U.S. has a Status of Forces Agreement (SOFA), the terms of that agreement will determine whether the member may be removed from the jurisdiction and whether the U.S. or host country will prosecute the case. In many countries, disciplinary action under the UCMJ (including NJP) may not be conducted until the issue of jurisdiction has been resolved with the host country. Consult with the cognizant SJA immediately.

NO SOFA: If there is no SOFA, CO's are not authorized to deliver members or civilian employees of DON or their dependents to foreign authorities. Contact the cognizant SJA immediately.

WARSHIP SOVEREIGNTY: U.S. warships are immune from any other nation's jurisdiction. COs shall not permit his/her ship to be searched or allow personnel to be removed by foreign authorities. If foreign authorities use force to compel submission, the CO should resist to the utmost of his/her power. See reference (b).

PERSONNEL RETAINED IN FOREIGN CUSTODY: Must be visited on a regular basis and may not be separated from the service until they complete sentence and return to U.S. [See reference (c)].

LIBERTY RISK

REFERENCES: (a) [JAGMAN 0104](#)

(Primary instructions governing liberty risk are normally issued by major overseas and fleet commanders)

APPLICABILITY: Liberty risk only applies in foreign countries and foreign territorial seas. The underlying purpose for liberty risk is to protect U.S. foreign relations with host countries.

DISTINGUISH FROM DISCIPLINARY ACTION: Liberty risk may not be used as punishment and cannot be awarded at NJP or courts-martial. Liberty risk should not be used as a subterfuge for pretrial restraint. Do not use this administrative measure to satisfy the need for discipline. [see *ADMINISTRATIVE DISCIPLINARY OPTIONS* and *PRETRIAL* ~~OPTIONS~~ *PROCEDURES*]. Liberty risk assignment is based on prior behavior that indicates likely future conduct in a foreign country could embarrass or discredit the U.S. Armed Forces. Thus, members should be classified as a liberty risk only if their past conduct demonstrates the likelihood of inappropriate or improper behavior. This could be shown based on past actions involving excessive or chronic intoxication; fights; theft; malicious mischief; refusal to pay lawful debts; lewd personal appearance; inflammatory or contentious conduct, or other behavior that may bring discredit the U.S. in the host nation.

GENERAL GUIDANCE:

- Only the CO or acting CO may assign a member to liberty risk (generally after a recommendation from a liberty risk board);
- Placement on liberty risk cannot be automatic;
- Lesser forms or limitations on liberty should be considered (e.g. limited hours ashore);
- Each individual's status must be regularly reviewed;
- Liberty risk cannot be indefinite.

RIGHTS OF MEMBERS PLACED IN LIBERTY RISK STATUS:

- Opportunity for request mast with the CO;
- Specific notification in writing of the reason(s) for being placed on liberty risk; and
- May not be required to muster or participate on special working parties with members serving punishment issued at NJP or courts-martial.

ALCOHOL RELATED INCIDENTS: May serve as the basis, among other reasons, for imposition of Liberty Risk. Additionally, DAPA/CAAC screening also should be conducted.

MARRIAGES – OVERSEAS

REFERENCES: (a) [MILPERSMAN 5352-030](#)

REQUEST/APPLICATION: Any member planning to marry a foreign national overseas must submit an application to the area coordinator. Applications should be sent to the nearest area coordinator. Contact CNIC (N911A) for areas not listed in reference (a).

COUNSELING: Member must be counseled regarding the legal responsibilities incurred by marriage, including financial obligations. Member should also be advised that approval process is often lengthy.

VALIDITY OF FOREIGN MARRIAGE: The marriage must be valid under the law of the jurisdiction where it was performed.

INTENDED SPOUSES: Must receive medical screening and background investigations. Local United States Embassy or Consulate will conduct background investigation, including a criminal and subversive record check.

VISAS: There is no automatic right for foreign spouses to be granted visas to enter the United States. Foreign spouses must apply for an immigrant visa with local embassy or U.S. Citizenship and Immigration Service (USCIS).

Section X: **LEGAL ASSISTANCE**

REFERENCES: (a) [JAGMAN](#)

- (b) [MCO P5800.16](#) Chapter 14 (series) (LEGADMINMAN)
- (c) [JAGINST 5801.2](#) (series) (Legal Assistance Manual)

LEGAL ASSISTANCE PROGRAM : The Department of the Navy legal assistance program provides free attorney assistance to members, their dependents, and other eligible clients regarding personal legal matters not involving military disciplinary proceedings. Legal assistance (LA) is provided at all Naval Legal Service Offices and Marine Law Centers and may also be available at the military legal offices of other services and from reserve personnel and units.

PERSONS ELIGIBLE FOR LEGAL ASSISTANCE

Members of the armed forces on active duty for 30 days or more. Legal assistance is intended primarily for active duty personnel, including Reservists and members of the National Guard on active duty for 30 days or more. For reservists on active duty for less than 30 days, see reference (a), 0706(b)(4) and 0706(b)(5). As resources permit, legal assistance may also be provided to the following categories of people in the order listed:

- (1) Family members of active duty personnel and of personnel who died while on active duty.
- (2) Members and former members entitled to retired or retainer pay, or equivalent pay.
- (3) Family members of retired members and family members of deceased retired members.
- (4) Reservists on active duty for single periods of 29 days or less and their family members may be provided legal assistance in emergency cases.
- (5) For the purpose of enhancing the readiness of Reserve personnel for mobilization, pre-mobilization legal counseling and assistance may be provided to active duty or inactive Reserve personnel consistent with mobilization readiness needs. Pre-mobilization assistance normally will consist of drafting or updating wills, advance medical directives, and powers of attorney. Other assistance may be provided if it relates to recall or mobilization. Examples of such assistance include advice concerning rights under the Service Members civil Relief Act (SCRA) or the Uniformed Services Employment and Reemployment Rights Act (USERRA). Pre-mobilization legal assistance services are not authorized for family members.
- (6) Members of Reserve components following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority, as determined by the Secretary of Defense, for

a period of time that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

(7) Family members of members of the Reserve components listed in subsection (6) above.

(8) Civilian personnel who are U. S. citizens, other than local hire employees, employed by, serving with, or accompanying the Armed Forces of the U.S., when they are assigned to a foreign country or to a vessel or unit of the Armed Forces of the U. S. deployed in excess of 30 days.

(9) Family members accompanying authorized civilians listed in subsection above.

(10) Members of allied forces and their family members in the U. S. serving with the Armed Forces of the U.S.

(11) A 20/20/20 un-remarried former spouse as defined in 10 U.S.C. § 1072.

(12) Spouses, former spouses, and children who are victims of abuse by members losing the right to retired pay under 10 U. S. C. § 1408 (h).

(13) Dependents of members separated for dependent abuse consistent with the transitional compensation provisions of 10 U.S.C. § 1059.

CONFIDENTIALITY: Information disclosed to an LA attorney is confidential and may not be disclosed to third parties without the client's consent. **LA offices are prohibited from disclosing information concerning a client – including whether the client received services at all – to the client's command or other persons.**

SERVICES: Although the availability of types of services may vary from office to office, services provided generally include assistance with *divorce, child and spousal support, adoptions, custody, estate planning, landlord/tenant disputes, contracts, consumer fraud, identity theft, and immigration issues and the preparation of legal documents such as wills, living wills and powers of attorney*. The assistance provided generally does not include in-court representation although some offices are permitted to prepare court documents. [see. *[SEE VICTIM/WITNESS ISSUES]*]

LA PROVIDERS: Eligible recipients may seek legal assistance at any LA office, regardless of the branch of service. Navy and Marine Corps legal offices provide assistance to Soldiers, Airmen, and Coast Guardsmen, and Army, Air Force, and Coast Guard legal offices should similarly provide services to Sailors and Marines and their dependents. A helpful tool for locating the LA provider nearest you can be found at <http://legalassistance.law.af.mil/content/locator.php>.

CONFLICTS: Occasionally, a LA office will be prohibited from providing services to an otherwise eligible person due to an ethical conflict of interest. This usually arises when an attorney in the legal office has already provided assistance to the opposing party or to a party that previously listed the person seeking services as an opposing party. Members conflicted from receiving assistance at the office will normally be referred to an alternate service provider if one is reasonably available. Due to client confidentiality, the LA office is prohibited from telling the conflicted client why he or she cannot be seen.

PREVENTIVE LAW: Most LA offices have a preventive law program through which attorneys and other legal professionals provide informational briefings on a variety of topics including deployment readiness, consumer law, identity theft, automobile purchases, wills powers of attorney, and family support. Contact your local NLSO or Marine Law Center for more information or to schedule a briefing.

PREDEPLOYMENT/PREMOBILIZATION SERVICES: The main focus of the LA Program is Fleet readiness. LA offices have been charged with maintaining legal readiness programs designed to ensure legal awareness and mission readiness. Such programs often include command will visits and pre-deployment legal readiness check-ups. [see *PREDEPLOYMENT LEGAL READINESS*].

PREDEPLOYMENT LEGAL READINESS

REFERENCES: (a) [DoD Dir 1350.4](#)

READINESS: Poor legal readiness can significantly impair the member's ability to focus on mission accomplishment. Unfortunately, members often fail to address their legal problems in a timely fashion, creating larger legal problems for themselves and their families. Members should be encouraged and provided an opportunity to have their individual legal readiness assessed by a legal assistance attorney at least annually and well in advance of deployment.

LEGAL ISSUES: At a minimum the following legal readiness issues should be addressed:

- **Powers of Attorney:** Allows an agent to act on the member's behalf. Special POAs authorize the agent to act in a narrow capacity (registering a vehicle, filing taxes, accepting or turning over government housing, etc.) while general POAs authorize the agent to act on the member's behalf in virtually any capacity. Due to the potential for abuse of a general POA, members are encouraged to carefully consider whether a general POA is necessary and whether they can fully trust their agent.
- **Last Will and Testament:** Ensures that the member's wishes are carried out upon the member's death. Members should have a current and up to date will, and family members should know where to locate the will. Members should update their wills every time they PCS or experience a significant change in financial or dependency status.
- **Living Wills and Health Care Powers of Attorney:** A Living Will (also known as an Advance Medical Directive) is a document that expresses the member's desires regarding the withdrawal of artificial life sustaining measures when the member is terminally ill or in a persistently vegetative state. A Health Care Power of Attorney is a document in which the member designates a person or persons to make health care decisions for the member in the event that the member becomes incapacitated.
- **Servicemembers' Group Life Insurance (SGLI) Designations:** Members should ensure that their SGLI designation forms are up to date. SGLI distributions are controlled exclusively by the SGLI designation form which can be updated through PSD or the personnel office. Also, members wishing to designate children under 18 as beneficiaries should seek the assistance of a legal assistance attorney to establish a trust or custodianship to avoid significant delay and expense when it comes time for distribution.
- **Page 2 (record of dependency data):** An outdated Page 2 can cause problems and confusion in contacting dependents and can result in dependents being denied military benefits.

- **Family Matters:** Family care plans, and issues regarding divorce, support, custody, visitation and military ID cards should all be resolved or addressed prior to deployment. Poor planning in this regard can result in significant impairment of member readiness.
- **Pending Court Cases :** Members should take action to address or postpone pending court actions prior to deployment. Failing to appear may result in a default judgment against the member (in civil cases) or the issuing of a bench warrant (in criminal cases).
- **Preventing Identity Theft – Active Duty Alerts and Free Credit Reports:** Deployed and TAD members are highly susceptible to identity theft. To minimize the potential for identity theft, members should consider filing an Active Duty Alert with one of the three Consumer Reporting Agencies (CRAs), Trans Union (1-800-680-7289), Equifax (1-888-766-0008), or Experian (1-888-397-3742). Once an Active Duty Alert is placed on a member's credit report, potential creditors are required to contact the member at a phone number provided by the member or otherwise positively identify the member before extending new credit, issuing additional cards on existing credit accounts, or extending credit limits on existing accounts. Filing an Active Duty Alert also takes the member's name off of prescreening lists provided by CRAs to creditors and insurance companies seeking to solicit new business. Members may file an Active Duty Alert on the credit report by contacting one of the three CRAs, which must then notify the other two CRAs of the alert. Members should also be encouraged to regularly monitor their credit report by taking advantage of their right to receive a free annual credit report from the major CRAs. Visit www.annualcreditreport.com (a website sponsored by the major three CRAs) for more information.

ASSISTANCE: Legal readiness assistance is available at all Naval Legal Service Offices and Marine Law Centers and may also be available at other legal offices and from Naval and Marine Corps Reserve personnel and units. Many legal offices will send attorneys to commands to conduct will and power of attorney visits, provide pre-deployment briefs, and conduct legal readiness assessments.

Reserve Note: Uniformed Services Employment and Reemployment Rights Act (USERRA): Reserve members deploying should ensure that they comply with the notice requirements of The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA, 38 U.S.C. §§ 4301 – 4335) before they mobilize with respect to advising their employer of their intentions of retaining their civilian jobs after they demobilize, their intentions about whether or not they will be maintaining any health insurance provided by their employer during their mobilization, and their intentions about using any other rights under USERRA. USERRA is a federal law intended to ensure that persons who serve or have served in the Armed Forces, Reserves, National Guard or other “uniformed services.” (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; (3) are not discriminated against in employment based on past, present, or future military service; and (4) are protected with a variety of other benefits retained

during the mobilization as outlined in USERRA. The federal government is to be a "model employer" under USERRA. If there are any questions about the law, procedures under USERRA, suspected discrimination by a civilian employer, or questions of compliance should be promptly advised to seek legal assistance at a NLSO and consider contacting the Department of Labor and to the Committee for the Employer Support of the Guard and Reserve (1-800-336-4590).

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

REFERENCES: (a) [50 U.S.C. §§501-596](#)

BACKGROUND: The SCRA is a federal law that provides service members – and in some cases, their dependents – with a variety of important federal protections in civil matters. These laws were passed in an effort to address some of the disadvantages faced by military personnel in dealing with their personal civil affairs due to the transient and unpredictable nature of military life. Several of the more important provisions are discussed below. Service members facing legal problems should be referred to a legal assistance attorney.

LEASE TERMINATION: The SCRA provides a service member the right to terminate a lease for real property that is occupied or intended to be occupied by the service member or his dependents if, after signing the lease:

- The service member enters military service (an activated reservist, for example);
- The service member receives orders to deploy with a military unit for 90 days or more; or
- The service member receives PCS orders.

To terminate a lease under the SCRA, the tenant must deliver written notice of his intent to terminate the lease under the SCRA and provide a copy of the deployment/PCS orders. For sailors deploying with a ship, the sailor should obtain a letter from the command verifying the approximate dates and duration of the deployment (since the sailor himself will not receive a deployment order). Once the service member provides the required notice and documents, the lease is terminated effective 30 days from the date on which the next rent payment would be due. For example, if the rent is normally due on the 1st day of the month and the member provides notice on 15 March, the lease would be terminated effective 1 May (30 days from 1 April). Although landlords are prohibited from charging an early termination fee under the act, the landlord can still assess fees for late payments (if the tenant is behind on rent) and damage to the property.

STAY OF LEGAL PROCEEDINGS: The SCRA provides the member a right to “stay” -- or delay -- civil and administrative proceedings if the member’s ability to appear is *materially affected by the member’s military service*. This protection applies only to civil and administrative proceedings – not criminal proceedings. If the member qualifies for the stay, the court MUST grant the stay for a minimum of 90 days. To request the stay, the member must submit to the court:

- A letter stating how the member’s military service materially affects his ability to appear and when the member will be able to appear; and
- A letter from the member’s commanding officer stating that the member’s current duty prevents appearance and that leave is not authorized.

The member may request a delay longer than 90 days, but the court has the option of denying the request and proceeding without the member. The SCRA stay provisions do not make the matter go away – the member will eventually have to take action to resolve the matter.

DEFAULT JUDGMENTS: Members have the right to reopen *default judgments* (judgments issued by a court when the member fails to appear at a hearing and contest the matter) issued in civil cases in which the member's military service materially affected his ability to appear in the case and the member has a meritorious defense. Additionally, before a court issues a default judgment, the SCRA requires that the other party file an affidavit with the court stating either that the person is in the military service, is not in military service, or that the party filing the affidavit does not know if the person is in the military service. The Act provides penalties for filing a false affidavit but does not provide a penalty for failing to file an affidavit.

6% INTEREST RATE CAP: An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a service member, or the service member and the service member's spouse jointly, before the service member enters military service shall not bear interest at a rate in excess of 6 percent –

- During the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or
- During the period of military service, in the case of any other obligation or liability.

DOMICILE PROTECTION: The SCRA permits members to maintain their legal domicile in a state even though they relocate out of that state. A member establishes domicile in a state by being physically present in that state at some point and having the intent to return to that state. Contrary to popular belief, members do NOT establish domicile by simply completing paperwork at their servicing personnel office. Once a member has established domicile in a state, the member should refrain from taking action contrary to that (i.e. registering to vote or obtaining a driver's license in another state).

TAXATION: The SCRA has numerous provisions designed to prevent military members from being taxed in multiple jurisdictions.

- **Income Tax:** Military pay is deemed to have been earned in the member's state of domicile and only that jurisdiction may tax military pay. This does not apply to non-military pay which may be taxed by the jurisdiction in which the pay was earned, in which the taxpayer is currently living, and the taxpayer's state of domicile.
- **Personal Property Tax:** A jurisdiction is prohibited from charging a personal property tax on a member's property if that property is located within that jurisdiction only because of the member's presence in that state due to military assignment (orders). This protection does not apply

to sales or use taxes, and the member's state of domicile always remains able to charge a personal property tax.

EVICTION PROTECTION: Landlords are prohibited from evicting members and their dependents without first obtaining court order. If the member can demonstrate that his military service materially affects his ability to pay rent, the court can fashion an equitable remedy, including reducing the amount of rent. This protection applies for leases with a rent of \$2,932.31 (2009 value) per month or less.

FORECLOSURE PROTECTION: No company or individual can foreclose on an active service member's property (property that was owned prior to entering service) without a valid court order.

The court issuing the order has the discretion to stay the foreclosure proceedings within **9 months** after a service member's period of military service.

REPOSSESSION PROTECTION: Lenders may not repossess personal property owned by a member without first obtaining a court order to do so. This protection applies to obligations incurred before the member was ordered to active duty.

DOMICILE and TAXATION: The Military Spouse Residency Relief Act (MSRRA) now allows the non-military spouses of servicemembers to claim the same domicile as the servicemember spouse. In certain circumstances, this may allow the spouse of the servicemember to claim to be exempt from local state income taxes where the spouse is stationed with the servicemember in a state other than their domicile. Servicemembers and their families should consult a local legal assistance office to determine how the MSRRA may apply to them.

DEPENDENT SUPPORT

REFERENCES: (a) [32 C.F.R. Part 733, 734](#)
(b) [MILPERSMAN 1754-030](#)
(c) [MCO P5800.16A \(LEGADMINMAN\)](#)
(d) [MILPERSMAN 1910-140](#)

POLICY: Military members are expected to provide continuous and adequate support for all lawful dependents. Each branch of the armed forces has issued support guidelines. References (b) and (c) provide the guidelines for the Navy and Marine Corps, respectively. Members who are the subject of nonsupport complaints should be encouraged to consult with a Legal Assistance attorney.

COURT ORDERS AND WRITTEN AGREEMENTS: Members are obligated to comply with written agreements and valid court orders that establish support obligations. Members failing to comply with such agreements and orders may be disciplined under Article 134, UCMJ, for failure to pay a just debt. Members contesting such orders must do so in the jurisdiction issuing the order.

MILITARY SUPPORT REGULATIONS: In the absence of a court order or written agreement, Navy and Marine Corps support regulations apply.

PERSONS ENTITLED TO SUPPORT : In the absence of a court order or written agreement, members are obligated to support their lawful dependents including spouses, natural children, and adopted children but not step children.

NAVY: Reference (b) provides guidelines and recommended levels of support. Commands must counsel the member concerning his/her support obligation but may NOT order a member to provide support in accordance with the guidelines.

- **Waiver of Spousal Support:** Members may seek a waiver of the spousal support obligation when the spouse seeking support abused or abandoned the member, or the spouse engaged in an adulterous affair. Waivers are processed through Defense Finance and Accounting Services (DFAS) IAW reference (b).
- **Action Upon Complaint:** Counsel member concerning his/her obligation to support lawful dependents IAW reference (b) and advise of the possible consequences of failure to do so.
- **Failure to Support :** Members failing to provide continuous and adequate support may lose their entitlement to Basic Allowance for Housing (BAH) with dependents, receive adverse evaluation/FITREP marks, receive written counseling, and be administratively separated IAW reference (d).

MARINES: Reference (c), Chapter 15 provides a formula for calculating support amounts and empowers commanders to issue a lawful order to provide support IAW the regulation.

- **Waiver of Spousal Support:** Commanders may waive the spousal support obligation only when the spouse seeking the support abused the Marine, the spouse's income exceeds that of the Marine, the spouse and the Marine are both military members, or the Marine has been providing continuous support for the spouse for 12 months IAW reference (b). Commanders may also reduce the amount of support otherwise owed if the Marine is paying regular and recurring obligations of the spouse.
- **Action Upon Complaint:** Counsel the member concerning his/her obligations and, if necessary, issue a written order to provide support in a specific amount using the forms in reference (c).
- **Failure to Support:** Marines failing to provide continuous and adequate support may lose their entitlement to BAH with dependents and be subject to adverse administrative and disciplinary action, including punishment under the UCMJ for violation of a lawful order.

PATERNITY: In the case of out of wedlock children where paternity has not been established by affidavit, judicial decree, or DNA test, the member cannot be required to provide support. See *PATERNITY COMPLAINTS*.

Reserve Note: Reserve members who are activated for an extended period of active duty and who have their pay garnished directly from their civilian employer to satisfy a support obligation should be reminded that they must provide a certified copy of the order directing their employer to withhold those support payments directly from their income to the Navy and Marine Corps. This is typically done by having a certified copy to present at the Navy Mobilization Processing Site (NMPS) during the activation process when having the active duty pay account of the reserve member established. Reserve members must follow-up and if the NMPS does not ensure that the support income withholding is established by NMPS then the member must follow-up with their finance office at their mobilization site or directly with the Defense Finance and Accounting Service (DFAS) to ensure that there is no interruption in their payment of their support obligation. Failure to make sure that the payment of a support obligation is not interrupted could result in the reserve member facing a support arrearage after the mobilization.

PATERNITY COMPLAINTS

REFERENCES: (a) [MILPERSMAN 5800-010](#)
(b) [MILPERSMAN 1754-030](#)
(c) [MCO P5800.16A \(LEGADMINMAN\)](#)

POLICY: Members owe the same duty of support regardless of whether a child was born during a marriage or out of wedlock.

DETERMINATION OF PATERNITY: DON does not determine disputed paternity actions; this is a matter for states.

SUPPORT ORDERS: Members must comply with state court orders.

Compliance is necessary even if member disputes paternity or does not believe that an official determination of paternity has been made.

Refer member to legal assistance attorney/civilian attorney to challenge order.

UPON RECEIPT OF A WRITTEN COMPLAINT: Member must be interviewed and counseled [see reference (a)].

ADMISSION OF PATERNITY: If member admits paternity, he should be counseled on obligation to provide support.

If no state order, support may be made IAW service guidelines in references (b) and (c), or member must enter into a voluntary written agreement with the mother or guardian of the child.

If member is now eligible for BAH, PSD will require written acknowledgement of paternity.

DENIAL OR ACKNOWLEDGMENT OF PATERNITY: Refer member to a legal assistance attorney/civilian counsel to challenge or before acknowledging paternity [see reference (a) for a sample letter to respond to complainant].

ADMINISTRATIVE OR DISCIPLINARY ACTION: After counseling, if the member continues to fail to provide child support IAW a state order, mutual agreement, or service guidelines, administrative or disciplinary action may be warranted [see *ADMINISTRATIVE & DISCIPLINARY OPTIONS*].

LEGAL ASSISTANCE: Members should be referred to a legal assistance provider for counseling on parenting issues such as paternity, blood testing and child support before any action is taken.

INDEBTEDNESS COMPLAINTS

REFERENCES: (a) [DoD Dir 1344.9](#)
(b) [MILPERSMAN 7000-020](#)
(c) [MILPERSMAN 7000-010](#)
(d) [MCO P5800.16A](#) (LEGADMINMAN)
(e) [MILPERSMAN](#)
(f) [MCO P1900.16](#) (MARCORPSEPMAN)
(g) DoD Dir 1344.9

POLICY: Members are expected to pay their just financial obligations in a proper and timely manner. However, no internal DoD authority exists to adjudicate disputed claims or enforce settlement of private claims made against members.

COMPLAINTS: Process IAW references (a), (b) or (c), counsel the member, and refer the member to a Legal Assistance attorney and the Command Financial Specialist. Commands will not arbitrate disputed claims and may NEVER indicate to a complainant (as described below) what, if any, command action was taken against a member. Command action will depend upon whether the complainant is a debt collector, creditor or non-creditor as explained below.

DEBT COLLECTORS: A debt collector is a person or entity regularly engaged in the collection of debts (e.g. collection agencies, law firms, etc.). Debt collectors are **prohibited** by the Fair Debt Collection Practices Act from contacting third parties (including the member's command) to collect a debt that has not been reduced to judgment unless the member consents to such contact after the delinquency occurred. Most indebtedness complaints from debt collectors should be returned without action using the sample letter in reference (a) or (c).

CREDITORS: A creditor is a person or entity that extends credit (e.g. car loans, bank loans, credit cards, etc.). Creditors must certify compliance with the DoD Standards of Fairness and, if subject to Federal Trade Commission (FTC) regulations, must certify compliance with the Truth in Lending Act and other FTC regulations before the command acts on a complaint from the creditor. Command assistance to creditors should be limited to administrative referral of correspondence to the member and counseling of the member concerning his obligations. Commands should respond to creditors using the sample letter in reference (a) or (c).

NON-CREDITORS: A non-creditor is an entity that did not extend credit but to whom money is owed (e.g. the member bounced a check to a supermarket or landlord). Commands should respond to non-creditors using a letter substantially similar to the letters in reference (a) or (c). [See reference (b)].

DOCUMENTING A MEMBER'S FAILURE : Use Page 13/11 administrative remarks for members with serious or recurring problems.

DISCIPLINARY ACTION: May be initiated when there has been a dishonorable failure to pay just debts or dishonorable failure to maintain checking funds under Article 134, UCMJ.

ADMINISTRATIVE SEPARATION: May be used when there is a pattern of failure to pay just debts and the member has violated written counseling to that effect. [See references (d, 1910-140) and (e), 6210].

INVOLUNTARY ALLOTMENT APPLICATIONS (Defense Finance and Accounting Services [DFAS] Form 2653): Process IAW reference (f).

Section XI: FAMILY RELATIONSHIP ISSUES

DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS

REFERENCES: (a) [SECNAVINST 1752.3B](#) (series)
(b) [DOD Directive 6400.1M](#)
(c) [10 U.S.C. Sec. 1058](#)
(d) [OPNAVINST 1752.1B](#) (series)
(e) [OPNAVINST 1752.2B](#) (series)
(f) [MCO 5300.17](#) (series)
(g) [18 U.S.C Sec 921](#)
(h) [MILPERSMAN 1910-162](#)

POTENTIAL REPORTING REQUIREMENTS:

- Comply with all reporting requirements laid out in enclosure (2) of reference (a).
- Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*)
- Violent crime message. Incidents involving sexual assaults. (See *VICTIM/WITNESS*)
- Incidents involving officers IAW with TYCOM/Echelon II requirements. (See *OFFICER MISCONDUCT*)

NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE (FAR)

(FAR): Navy, notify FAR of all allegations of spouse or child abuse. FAR will notify BUPERS (Pers-482 and Pers-483), when allegations of child sexual abuse are made. USMC, notify command Family Advocacy Officer and/or Family Advocacy Program Manager at Marine and Family Services.

TRACK THE CASE: Appoint the XO or a responsible command representative to work with Family Advocacy and provide command input on disposition.

DISPOSITION: The Family Advocacy Incident Determination Committee (IDC) is currently replacing the Case Review Committee (CRC) process based on OSD Memo dtd 10 MAR 10. Additional instruction and guidance is expected to be forthcoming. The IDC will make a determination of whether an act meets DOD criteria for abuse. This determination, if substantiated will then be sent to the Clinical Case Staff Meeting (CCSM) to generate treatment recommendations, which will then be forwarded to the command.

CO maintains sole discretion over disciplinary action. Family Advocacy review does not preclude or limit command disciplinary action. (See *ADMINISTRATION & DISCIPLINARY OPTIONS*)

Formal Review OF IDC/CRC DETERMINATIONS:

Navy: IDC/CRC determinations can be appealed to the IDC/CRC, and then to a Headquarters Review Team at BUPERS. Appeals must be in writing, and normally filed within 30 days of the advisement of the IDC/CRC determination. Appeals can be filed by the alleged offender, victim, or command of either, and in cases involving child abuse, the non-offending parent, on the following grounds:

- Newly discovered evidence;
- Fraud upon the CRC;
- Voting member of the CRC absent;
- Not Guilty/Guilty finding after a full trial on the merits that is contrary to CRC findings;
- Plain legal or factual error.

USMC: IDC/CRC determinations can be appealed to the installation IDC/CRC. Appeals must be in writing, and normally filed within 10 days of the advisement of the CRC determination. Appeals can be filed by a substantiated offender or victim, or person legally responsible for the victim or either spouse where the incident was “unsubstantiated – did not” occur on the following grounds:

- Newly discovered information,
- Failure to substantially follow correct procedures, or
- Not Guilty/Guilty finding after a full trial on the merits that is contrary to CRC findings.

TREATMENT OF VICTIMS: Coordinate under the Victim/Witness Assistance Program. (See *VICTIM/WITNESSES*).

INTERVENTION: Ensure that appropriate actions are taken to provide for the protection of victims during the investigation and processing of a FAP case [e.g. issuance of a military protective order (MPO) to remove the military member from the family home (whether on or off base); coordination with local child protective services to have the child removed from the home; or issuance of an order barring alleged perpetrators from Navy installations]. (See *LAW ENFORCEMENT CIVILIAN JURISDICTION*).

MILITARY PROTECTIVE ORDERS (MPO): Written order requiring member to move out of home or to “stay away” from complainant. Should be issued whenever it is likely or foreseeable that further incidents will arise. Should be issued in writing. Must be temporary in nature but may be renewed and should be in force until Family Advocacy counselors have intervened. Will also protect members from false allegations. Consult with a legal advisor.

INTERVIEWING OR QUESTIONING SUSPECTED OFFENDERS:

Should not be done if a law enforcement agency (NCIS, CID, or civilian) is investigating. (See *NCIS INCIDENT REPORTING & SUSPECT—QUESTIONING*).

ALCOHOL RELATED INCIDENTS: DAPA/CAAC/SACO screening should be conducted.

MANDATORY PROCESSING: ADSEP processing must be initiated for sexual perversion, or in any case involving conduct which caused or could have caused death or serious bodily injury. Rehabilitation failure cases are separated under reference (h) (See *ADMINISTRATIVE SEPARATIONS*).

ADMINISTRATIVE BOARDS: Request assignment of a Judge Advocate to act as the command representative.

FIREARMS AND AMMUNITION POSSESSION: If convicted at SPCM/GCM or any civilian court of crime of domestic violence, then service member is no longer permitted to possess a firearm or handle ammunition, even in the line of duty. Consult with your SJA for further information on Lautenberg Amendment restrictions.

Section XII: ETHICS

GUIDELINES FOR ETHICAL CONDUCT

REFERENCES: (a) [5 CFR 2635](#)
(b) [DoD 5500.7-R](#) (JER)
(c) [MCO P5800.16A](#) (series) Chapter 11

BASIC OBLIGATIONS OF PUBLIC SERVICE

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the law, and ethical principles above private gain.
- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- Employees shall put forth honest effort in the performance of their duties.
- Employees shall not make unauthorized commitments or promises (knowingly) of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex,

national origin, age, or handicap.

- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

COMMERCIAL DEALINGS BETWEEN MEMBERS

REFERENCES: (a) [DoD 5500.7-R Section 5-409](#) (JER)

SENIOR TO JUNIOR: On or off duty, a military member cannot solicit or sell to personnel who are junior in rank, grade or position, or to the family members of such personnel. Included in this prohibition are sales of insurance, stocks, mutual funds, cosmetics, household supplies, vitamins, real estate or any other goods or services.

EXCEPTIONS:

Absent coercion/intimidation, the sale or lease of noncommercial personal or real property and commercial sales solicited and made in a retail establishment during off-duty employment are not prohibited.

Sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion/intimidation.

SPOUSES/OTHER HOUSEHOLD MEMBER: Must seek opinion of Ethics Counselor (GCMCA SJA) if spouse or household member is soliciting sales to junior personnel or their families. The member should be counseled that such sales activities are to be avoided where it may cause actual or perceived partiality or unfairness, involve the actual or apparent use of rank/position for personal gain, or otherwise undermine discipline, morale, or authority.

CONFLICTS OF INTEREST

REFERENCES: (a) [18 U.S.C. 208](#)
(b) [DoD 5500.7-R](#) (JER), Section 5-100

OFFICIAL ACTIONS THAT HAVE A DIRECT AND PREDICTABLE

EFFECT ON PRIVATE FINANCIAL INTERESTS: Officer and enlisted members are prohibited from participating personally and substantially in an official capacity in any particular matter in which he/she (or any person whose interests are imputed to him/her) has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

IMPUTED INTERESTS: The interests of a spouse, child, general partner, organization in which the employee serves (i.e., as a director or trustee), or anyone with whom the employee is seeking or negotiating future employment, are imputed to the employee.

WHEN A CONFLICT EXISTS OR MAY (EVEN REMOTELY) EXIST:

- Seek the opinion of an Ethics Counselor (GCMCA SJA).
- Disqualify and do not participate or take further action on the matter.
- Provide written notice of the particular conflict to superior duties.
- Request a waiver, disqualification, reassignment or limitation of duties.

PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278): All flag/general officers must file:

- When promoted, annually thereafter, and upon termination.
- Ensure it is reviewed by an Ethics Counselor for potential conflicts of interest.
- Ensure any necessary remediation is made for conflicts disclosed.
- This document is available to the public.

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (SF-450): The following personnel are required to file:

- Navy shore installations with 500 or more military and civilian personnel.
- All CO's and XO's, heads, and deputy heads of Army, Air Force, and Marine Corps installations, bases, air stations or activities.
- All personnel who participate personally and substantially in contracting or procurement, regulating or auditing any non-Federal entity, or other activities having a direct and substantial economic impact on the interests of any non-Federal entity.

Any person whose official responsibilities require personal and substantial participation in contracting or procurement must file:

- Upon assuming the covered position and annually thereafter.
- It is reviewed by Ethics Counselor for conflicts and remediation if necessary.
- Information is kept confidential.

JOB HUNTING: When seeking outside employment the employee must disqualify himself/herself from any official action which could possibly affect the financial interests of the prospective employer.

- Disqualification must be in writing and sent to employee's supervisor.
- Can be reinstated when either party rejects possible employment.

Reserve Note: Reserve Personnel Conflict Issues: Reserve personnel must also be mindful of the conflict of interest issues unique to reserve component personnel. Reserve personnel are prohibited from performing their reserve component in the same location in which they are also employed in the Government Civil Service. Additionally, reserve component personnel who in their civilian lives are employed by a Government contractor must ensure that their service in a particular reserve billet would not present a conflict of interest in which the reserve member could be placed in a situation in which the reserve member makes decisions that can affect the same reserve members civilian employer, such as in various acquisition positions.

FUNDRAISING

REFERENCES: (a) [DoD 5500.7-R Section 3-210 \(JER\)](#)
(b) [DoD 5035.01](#)
(c) [OPNAVINST 1754.5B \(series\)](#)
(d) [MCO 5760.4C \(series\)](#)
(e) [MCO P1700.27B \(series\)](#)
(f) [BUPERSINST 1710.11C \(series\)](#)

OFFICIAL ENDORSEMENT: Commands may officially endorse fundraising efforts of:

- The Combined Federal Campaign (CFC);
- Emergency and disaster appeals approved by the Office of Personnel Management (OPM);
- Army Emergency Relief;
- Navy-Marine Corps Relief Society;
- Air Force Assistance Fund, including:
 - Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;
 - Air Force Village;
 - Air Force Aid Society;
 - General and Mrs. Curtis E. LeMay Foundation.
- Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee. (This includes most morale, welfare and recreation programs, regardless of funding sources).

OFFICIAL SUPPORT: Commands may officially support (vice endorse) a charitable fundraising event sponsored by a non-Federal entity if certain criteria of reference (a) are met. Such support is limited to logistical support (i.e., use of DoD facilities and equipment on a limited basis).

WORKSPACE SOLICITATIONS: Only for approved organizations with an official endorsement. Solicitations must be conducted in such a way as to ensure all contributions are voluntary.

Coercive practices are prohibited:

- Solicitation by supervisors.
- Setting 100 percent participation goals, mandatory personal goals or quotas.
- Using contributor or non-contributor lists for any purpose other than routine collection and forwarding of pledges.
- Counseling or grading of individuals based on their failure to contribute, or the size of their contribution.

- Special liberty cannot be used as an incentive to contribute to any fundraising effort.

FUNDRAISING BY MILITARY AFFILIATED PRIVATE ORGANIZATIONS AND/OR SPOUSE CLUBS:

AND/OR SPOUSE CLUBS: Sales of merchandise or services is authorized, but should be limited to occasional sales, and not be frequent or continuous. Competition with Navy Resale activities should be minimized. Gambling and/or raffles and lotteries for charity are permitted when the activities are held by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit of other DoD employees or their dependents, subject to the limitations of local law and subsections 3-210 and 3-211 of reference (a), when approved by the Head of the DoD Component or designee.

See *PRIVATE ORGANIZATIONS AND SPOUSE CLUBS, BIRTHDAY BALL FUNDRAISING, and GAMBLING*.

RAFFLES: Only authorized for Navy and Marine Corps Relief.

BINGO: Only authorized for MWR programs. [See reference (f)].

SOLICITING CONTRIBUTIONS FROM OUTSIDE SOURCES:

(e.g., local merchants, personnel) Prohibited for any and all fundraising activities.

Includes fundraising offering:

- Tours of installation and/or workspaces
- Rides in/on military vehicles, ships or aircraft

USE OF RANK OFFICIAL TITLE AND POSITION: May be used when conducting fundraising in official capacity for approved organizations. Only grade and military component may be used in connection with activities performed in personal capacity.

PERSONAL FUNDRAISING ACTIVITIES: In a private capacity, charity work, to include fundraising is encouraged. The following are prohibited:

- Solicitations in the work place.
- Solicitation of subordinates.
- Solicitation of prohibited sources.

See *GIFTS FROM OUTSIDE SOURCES*.

MARINE CORPS FUNDRAISING RESTRICTIONS:

- Fundraising events are authorized for MCCS MWR activities per the Joint Ethics Regulation [See reference (a)]. These events shall be limited to authorized users of these activities and funds raised must be for the benefit of the activities and their authorized users. Fundraising activities shall be conducted entirely on Marine Corps installations. Any gambling

activity, including a lottery, pool, or game of chance for money or property, is strictly prohibited.

- Individual Marine units on DoD installations may hold fundraising events to augment their own unit funds subject to local regulations. They should first receive permission from the local MCCS and comply with the above requirements.

BIRTHDAY BALL FUNDRAISING

REFERENCES: (a) [MCO 7040.11](#) (series)
(b) [MCO P1700.27B](#) (series)
(c) [DoD 5500.7R](#) (JER)
(d) [MCO 5760.4C](#) (series),
(e) [MCO P5800.16A](#) (series) (LEGADMINMAN)

USMC BIRTHDAY BALL. Two tiered event: Birthday balls have official and unofficial “tiers,” as set forth in reference (a), with different funding sources. The order allows limited use of appropriated funds for official portion:

- Transportation, printing, publication, and official ceremonial photos covered.
- Guest of honor and cake expenses must not be paid from appropriated funds.

Two funding options for unofficial portion:

Non-appropriated funds (NAF) NAF fundraising must have MCCS oversight.

- Any gambling activity, including a lottery, pool, or game of chance for money or property, is strictly prohibited as per reference (b).
- Monte Carlo games and activities are authorized if they award nonmonetary prizes. No reimbursement shall be made to patrons for unused or accumulated tickets, chips, etc. These events must be conducted entirely on the sponsoring installation. International agreements apply overseas.
- Units may not conduct raffles for fundraising. reference (b) contemplates units raising funds for MCCS.
- Reference (b) allows MCCS to conduct raffles.
- Private small unit fund established under reference (d) and applicable local orders.
- Income limits and other restrictions to comply with reference (c).
- Maintain accountability and sound management.

Fundraising: For either informal unit fund or via MCCS fundraising [see **FUNDRAISING**].

Gifts and donations cannot be solicited except among unit members. Unsolicited donations must be accepted as provided in chapter 12 of reference (e).

U.S. NAVY BIRTHDAY BALLS.

Because of restrictions that apply to official functions, units should conduct a Navy Ball as an unofficial event that is coordinated by a private, volunteer committee. If an unofficial committee is used, such a committee is a non-Federal entity, with attendant JER consequences. JER 3-301 allows DOD employees to become members and participate in the management of non-Federal entities in a personal capacity, *provided they act exclusively outside the scope of their official position*. Consult a Judge Advocate.

GAMBLING

REFERENCES: (a) [DoD 5500.7-R](#) (JER), Section 2-302
(b) [BUPERSINST 1710.11](#) (series)

PROHIBITION: A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 C.F.R. 735.201 except:

- Activities necessitated by a DoD employee's law enforcement duties;
- Activities by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit of other DoD employees or their dependents, subject to the limitations of local law and subsections 3-210 and 3-211 of this Regulation, below, when approved by the Head of the DoD Component or designee;
- Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws; or
- Purchases of lottery tickets authorized by any State from blind vendors licensed to operate vending facilities in accordance with 20 U.S.C. 107a (5).

Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ).

Gambling may be prohibited by Federal Government building and grounds regulations, such as 32 C.F.R. Part 4 which prohibits gambling in the Pentagon.

Use of government resources to prepare or further such activities is prohibited.

MWR BINGO AND NAVY RELIEF RAFFLES: Are permitted when conducted IAW applicable directives. See *FUNDRAISING*.

GAMBLING IN GOVERNMENT QUARTERS: Small wagers (e.g., card games, pools on sporting events), based on a personal relationship, transacted entirely within assigned government quarters (but not onboard ships) and not in violation of local law are permissible.

Participants may not engage in such conduct or activities if it would violate Navy Regulations (Gambling with Subordinates) or the service fraternization policies. See *FRATERNIZATION*.

GIFTS BETWEEN EMPLOYEES

REFERENCES: (a) [DoD 5500.7zR](#) (JER), Sections 2-100 and 2-203
(b) [5 C.F.R. 2635.304\(c\)\(1\)](#)

GENERAL RULE: A junior may not offer, give, make a donation, or solicit contributions for a gift to a senior in the same chain of command and the senior may not accept such a gift.

EXCEPTIONS TO THE GENERAL RULE:

- Token gifts of a nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from a vacation).
- Food and refreshments shared in the office.
- Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g., a junior could invite a superior to dinner).
- On special infrequent occasions such as child birth, marriage, retirement, change of command, etc... a gift appropriate for the occasion may be given, **not to exceed \$300**.

GROUP GIFTS: Authorized for special infrequent occasions (e.g., change of command or retirement). Get advice from your Ethics Counselor. Total cost cannot exceed \$300/group or \$10.00/person. All contributions must be voluntary. Cannot solicit more than \$10.00/person; however, members can choose to contribute more.

Creative attempts to avoid the \$300 maximum should be avoided (e.g., an organization should not be divided into different components solely to avoid the \$300 maximum by buying components of a greater gift).

A SUPERIOR MAY NOT COERCE A SUBORDINATE TO CONTRIBUTE OR PROVIDE A GIFT (THIS TYPICALLY IS WHERE MANY IG CALLS COME FROM).

GIFTS FROM OUTSIDE SOURCES

REFERENCES: (a) [DoD 5500.7-R](#) (JER), Section 2-100
(b) [SECNAVINST 4001.2J](#) (series)
(c) [SECNAVINST 1650.1H](#) (series)
(d) [U.S. Constitution: Article I, Section 9, Clause 8](#)
(e) [OPNAVINST 4001.1F](#) (series)
(f) [5 C.F.R. 2635.201-205](#)

GENERAL RULE: Federal employees are forbidden from soliciting, coercing, or accepting gifts from a “prohibited source” and gifts offered because of the employee’s official position. Gifts to family members or a designee are “imputed” to the employee.

“PROHIBITED SOURCES”: Any entity or person who is seeking official action from a federal employee or a federal agency; is doing or seeking to do business with the agency; or is regulated or substantially affected by the agency.

DEFINITION OF “GIFT”: Anything of monetary value. Items exempted from the definition, and therefore not considered gifts:

- Modest refreshments which are not offered as part of a meal (the “coffee and donut rule”).
- Greeting cards.
- Widely available discounts available to all military personnel.
- Prizes won in contests or events; including random drawings, which are open to the public.
- Items for which you pay fair market value (if you pay for it, it’s not a gift).

COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING

ACCEPTANCE OF A GIFT: (In all cases, and especially with regard to the exceptions listed below, an employee is prohibited from requesting, soliciting or coercing a gift; allowing or creating the appearance of bribery or graft; or accepting gifts so frequently that it creates an appearance of impropriety.)

- Gifts worth less than \$20.00 per occasion. No more than \$50.00 worth of gifts from any one source/calendar year.
- Gifts given because of a bona fide personal relationship.
- Awards for meritorious service. Must typically be non-cash and worth less than \$200.00.
- Gifts based on outside employment (i.e., approved moonlighting job or due to a spouse’s employment).
- Free attendance at an event where employee is speaking on behalf of agency.
- Free attendance at “widely attended gatherings” where attendance is deemed by a supervisor to be in the interests of the agency.

Check reference (f) for other exceptions.

FOREIGN GIFTS: Gifts from foreign governments may be accepted if proper diplomacy requires.

- Gifts with a fair market value (FMV) less than \$350 may be kept by the employee.
- Gifts with a FMV over \$350 may be accepted on behalf of DON and processed IAW reference (c).

PROCUREMENT (CONTRACTING) OFFICIALS: Anyone in a procurement position or who has ultimate responsibility for procurement should see their Ethics Counselor (GCMCA SJA) before accepting any gift.

NEVER ASSUME: Past practice or custom in an organization to accept certain gifts is not a defense. ASK THE ETHICS COUNSELOR (GCMCA SJA).

CIVIL AND CRIMINAL PENALTIES EXIST FOR VIOLATIONS OF THESE RULES.

GOVERNMENT PROPERTY

REFERENCES: (a) [DoD 5500.7-R](#) (JER), Sections 2-100 and 2-301
(b) [DoD Dir 4500.56](#)

PREVENT MISUSE OF GOVERNMENT PROPERTY:

Government property may not be utilized for private/personal purposes.

EXCEPTION: Limited personal use of Government resources may be permitted when:

- No adverse effect on performance of official duties;
- Use is of reasonable duration and frequency and use is during personal time;
- Serves a legitimate public interest;
- Does not reflect adversely on DoD or the command; and
- Creates no significant additional cost to DoD or the command.

PREVENT MISUSE OF GOVERNMENT TIME: While receiving pay, unless the member is in an authorized leave or liberty status, all hours should be dedicated to government work. Superiors cannot order junior personnel to perform personal tasks which benefit the superior (e.g., order to perform non-official "taxi" services for the CO's spouse).

AVOID "APPEARANCE" PROBLEMS: For both government property and time, members must not create the appearance of misuse/impropriety (e.g., using government vehicle at a "drive-thru" restaurant, even on official travel).

GOVERNMENT VEHICLES: May not be used to transport employees between their home and work. (31 USC 1344). Local directives should be consulted for further definition of authorized and/or prohibited uses.

RENTAL VEHICLES: [See *TRAVEL BENEFITS*].

GOVERNMENT AIRCRAFT: DoD guidelines on use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of MILAIR is a particularly sensitive area. Consult policy guidelines to ensure correct use. [See reference (b) and *TRAVEL BENEFITS*].

GIGS OR BARGES: Should avoid misuse or even the appearance thereof. May be used in support of foreign relations, community relations, and crew morale and welfare. It is highly recommended that you seek advice from an Ethics Counselor. Recreational use is not authorized.

Reserve Note: Reserve members who are in a flex drill status must sign an annual page 13 indicating that they understand the applicable rules for flexible drilling and must submit accurate IDT Drill sheet records. Similarly, reserve members who travel must timely submit their travel claims via DTS and must submit travel claims that are accurate.

OUTSIDE EMPLOYMENT

REFERENCES: (a) [DoD 5500.7-R](#) (JER), Sections 2-206 and 2-303
(b) [MILPERSMAN 5370-010](#)

CO's MAY REQUIRE MEMBERS TO REQUEST APPROVAL:

Command policy should be promulgated to ensure outside employment will not interfere or conflict with military duties. Case by case determinations should be made.

POTENTIAL CONFLICTS:

- Interference with official duties or time.
- Employment by a defense contractor/prohibited source.
See *CONFLICTS OF INTEREST*.
- Appearances of impropriety.
- Dual compensation: Second salary paid from U.S. Treasury/appropriated funds.
- Involvement in any matter in which the United States is an interested party or has a substantial interest.
- Employment which will detract from readiness or pose a security risk.
- Employment which prejudices good order and discipline or is service discrediting. See *COMMERCIAL DEALINGS BETWEEN MEMBERS*.

QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS COUNSELOR.

POLITICAL ACTIVITIES – MILITARY ACTIVE DUTY

REFERENCES: (a) [DoD Dir 1325.06](#)
(b) [DoD Dir 1344.10](#)
(c) [OPNAVINST 1620.1B](#) (series)
(d) [DoD 5500.7-R](#) (JER), Ch 6
(e) [MCO 5370.7](#) (series)

ALLOWABLE AND PROHIBITED POLITICAL ACTIVITIES:

Specifically allowed activities (e.g., voting, bumper stickers) and prohibited political activities (e.g., use of contemptuous words, recruiting membership in a criminal gang) are listed in reference (a), and enclosure (1) to reference (e).

CO's ANALYSIS: A CO may prohibit, limit, or control, the political expression of a member when there "is a clear danger to loyalty, discipline, or morale of military personnel; or there is a material interference with the accomplishment of the military mission" [see *FREEDOM OF EXPRESSION*].

WEARING UNIFORMS AT POLITICAL RALLIES: Members are prohibited from wearing uniforms at any political activity, such as speeches, rallies, interviews, picket lines, marches, or assemblies, knowing that a purpose of the activity supports personal or partisan views on political, social, economic, or religious issues, except as authorized in advance by the CO.

RIGHT TO DIRECTLY CONTACT CONGRESS: No person may restrict any member from communicating with Congress in the member's personal or private capacity. [see *CONGRESSIONAL INQUIRIES*].

Reserve Note: Reserve members who decide to run for political office as a civilian must be careful about how they advertise their military career as a campaign qualification or about using pictures of themselves in their military uniform in their campaign pamphlets, publications, advertising or communications. The reserve member must avoid implicitly or explicitly giving the impression that his or her candidacy is endorsed by the United States Navy, United States Marine Corps or the United States Government. Additionally, reserve component members must also review and follow the restrictions that apply to when it is appropriate or not appropriate for reserve personnel to wear their uniform.

PRIVATE ORGANIZATIONS AND FAMILY READINESS GROUPS

REFERENCES:

- (a) [DoD Dir 1000.11](#)
- (b) [DoD Inst 1000.15](#)
- (c) [DoD Inst 7600.6](#)
- (d) [DoD Dir 1000.26E](#)
- (e) [OPNAVINST 1700.7E](#) (series)
- (f) [OPNAVINST 1700.9E](#) (series)
- (g) [SECNAVINST 5720.44B](#) (series)
- (h) [OPNAVINST 5760.5C](#) (series)
- (i) [BUPERSINST 1710.11](#)
- (j) [MCO 1700.26C](#) (series)
- (k) OPNAVINST 1754.5B

STATUS OF PRIVATE ORGANIZATIONS: Private organizations are not Federal agencies or Non-Appropriated Fund Activity (NAFI) and are not entitled to the same level of support. The nature and amount of support varies depending on the organization. Applicable regulations must be consulted to determine what level of support is authorized for any particular group.

PRIVATE ORGANIZATIONS INCLUDE: Spouse Clubs; Boy Scouts; Girl Scouts; Navy League, Sea Cadets, athletic clubs; local school organizations; command organizations and social funds (e.g., First Class Association or Chief's Messes) are non-federal entities, i.e. not the US Government.

NO DISCRIMINATION: Private organizations must be denied support if they discriminate in membership practices based upon race, sex, religion, etc.

CREATION OF PRIVATE ORGANIZATION: Must have written approval from the installation CO to operate. Must have a constitution, by-laws, charter, or other authorization document approved by CO. Cannot state or imply sponsorship by DoD or DON, and should not use DoD, DON or other installation name or seal unless authorized.

PERIODIC REVIEW: Installation COs must conduct periodic reviews of all private organizations.

FUNDING AND SUPPORT: Private organizations are generally self-sustaining, primarily through dues, contributions, service charges, fees or special assessment of members. Limited fundraising activities conducted on the base may be permissible, under certain circumstances and controls. An ethics counselor (GCMCA SJA) should be consulted. Minimal logistical support is authorized, dependent on the type of private organization and the authority under which it is organized. No direct financial support from a NAFI is allowed except as specifically authorized by SECNAV.

Under certain circumstances, government resources may be used by private organizations. Consult a SJA for guidance.

Family Readiness Groups (FRG) can receive additional command support due to their status, see reference (k). An FRG is a private organization, closely-affiliated with the command, comprised of family members, Sailors, and civilians associated with the command and its personnel, who support the flow of information, provide practical tools for adjusting to Navy deployments and separations, and serve as a link between the command and Sailors' families. They help plan, coordinate and conduct informational, care-taking, morale-building and social activities to enhance preparedness, command mission readiness, and increase the resiliency and well-being of Sailors and their families. Installation commanding officers (ICOs) may permit properly approved FRGs, that meet the requirements of reference (k), to operate on Navy installations. Individual commands will provide limited logistical support, such as access to command spaces, use of equipment, and command representatives for FRG events, based on the criteria listed in OPNAVINST 1754.5B. Expenditure of Navy appropriated and non-appropriated funds is generally not authorized for FRG social activities, to include provision of food and beverages. Questions regarding specific events should be referred to judge advocates or office of general counsel attorneys in the chain of command. It is important to review reference (k), as well as the FRG handbook to assure full compliance in order to support.

TRAVEL BENEFITS

REFERENCES: (a) [DoD 5500.7-R](#) (JER), Chapter 4
(b) FY2002 [National Defense Authorization Act](#), Section 1116, 28 Dec 01
(c) [Joint Federal Travel Regulations](#) (JFTR)
(d) [31 U.S. Code 1353](#)
(e) [DoD Dir 4500.56](#)

ACCEPTING TRAVEL FROM A NON-FEDERAL SOURCE:

Official travel by DoD employees should normally be funded by the Government. However, official travel benefits from non-Federal sources may be accepted for attendance in an official capacity at a meeting or similar event. Acceptance must be approved in writing and an Ethics Counselor must be consulted.

INCIDENTAL BENEFITS: Federal employees are allowed to retain promotional items, earned while on official travel, for personal use. These promotional items include frequent flier miles, upgrades, and access to carrier clubs/facilities [see reference (b)].

FREQUENT FLYER MILES (FFM's): As described above, the 2002 NDAA now allows service members to keep FFM's from official travel for personal use. FFM's can also be used on official travel for upgrades.

ON THE SPOT UP-GRADES: Members may accept up-grades (even to first class) as long as official title and position are not basis for upgrade [see reference (a)]. One should avoid first-class travel in uniform.

OVER-BOOKING: If involuntarily bumped you may not keep free tickets or any other benefit received for personal use. If you voluntarily give up your seat and receive free tickets or another benefit, you may keep them for personal use. [Note: volunteering may not result in an increase of expense to the government; per diem and the additional time may not be charged or received on your travel claim].

RENTAL VEHICLES: Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. (JFTR U3415). In all other respects, rules applicable to use of Government vehicles apply to use of rental cars. Use of rental vehicles for personal entertainment purposes is not authorized.

GOVERNMENT AIRCRAFT: [See GOVERNMENT PROPERTY].

COMMAND COINS / RECOGNITION & RETENTION ITEMS

REFERENCES: (a) [10 U.S.C. 2261](#)
(b) [SECNAVINST 7042.7K](#) (series)

Command Coins can be purchased using three different sources of funds:

APPROPRIATED FUNDS: Appropriated funds may be used to purchase items intended for retention and/or recruitment. Item must cost \$50 or less and the command must document the justification for each item issued. Appropriated funds may also be used to purchase items for the recognition of members for specific achievement, outstanding accomplishment, or a unique achievement that contributes to command effectiveness. These items are considered awards.

OFFICIAL REPRESENTATION FUNDS (ORF): Reference (b) provides that ORF may be used to purchase gifts and mementos having a command/unit, Navy, or uniquely American or geographic theme, to be presented to specific classes of individuals such as foreign dignitaries or prominent citizens. ORF may therefore be used to purchase command/unit coins for presentation to only those groups of individuals listed in this instruction. Cost limitations are associated with the various types of recipients. Check reference (b) before purchasing/gifting the coin(s). An ORF coin record should be kept, to include the recipient and the reason for the presentation. Cost limitations are associated with the various types of recipients. Check reference (b) before purchasing/gifting the coin(s).

PERSONAL FUNDS: A commander may purchase coins with their own funds and are not bound by the restrictions noted above. Issuances of these coins are considered a gift and are subject to the gift rules.

DO NOT MIX COINS FROM DIFFERENT FUNDING SOURCES.

[See *GIFTS BETWEEN EMPLOYEES*]

Section XIII

APPENDIX

- A. NONJUDICIAL PUNISHMENT CHART
- B. SEARCH & SEIZURE CHECKLIST
- C. COURTS-MARTIAL PUNISHMENT CHART
- D. SEXUAL HARASSMENT INVESTIGATION CHART
- E. FRATERNIZATION INVESTIGATION CHART
- F. ARTICLE 138 CHECKLIST
- G. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE
- H. USE OF POSITIVE URINALYSIS
- I. ADMINISTRATIVE SEPARATIONS
- J. OVERVIEW OF MILITARY JUSTICE SYSTEM
- K. RELATIONS WITH CIVIL AUTHORITIES FLOW CHART

ARTICLE 15 PUNISHMENT LIMITATIONS

Imposed By	Imposed On	Bread & Water or DIMRATS (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4&5)	Reduction (4&6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command	Officers	No	No	30 Days	½ of 1 Mo. For 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E9	No	No	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	½ of 1 Mo. For 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (8)	Officers	No	No	No	No	No	No	15 Days	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	3 Days	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes

- (1) **May be awarded only if attached to or embarked in a vessel and may not be combined with other restraint punishment or extra duties.**
- (2) **May not be combined with restriction or extra duties.**
- (3) **May not be combined with restriction.**
- (4) **May be imposed in addition to or in lieu of all other punishments.**
- (5) **Shall be expressed in whole dollar amounts only.**
- (6) **Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion).**
- (7) **Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum possible for extra duties.**
- (8) **OICs regardless of rank have NJP authority over enlisted personnel only. OIC's and Marine CC may only reduce personnel within their promotion authority.**
- (9) **Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)**

CO SEARCH & SEIZURE CHECKLIST

I. FINDING THE EXISTENCE OF PROBABLE CAUSE TO ORDER A SEARCH:

When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you:

- A. Find out the name and duty station of the applicant requesting the search authorization.
- B. Administer an oath to the person requesting authorization. A recommended format for the oath is set forth below:

"Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

- C. What is the location and description of the premises, object, or person to be searched? **Ask yourself.**
 1. Is the person or area one over which I have jurisdiction?
 2. Is the person or place described with particularity?
- D. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?
- E. Who is the source of this information?
 1. If the source is a person other than the applicant who is before you (e.g., an informant), see the attached addendum on this subject.
 2. If the source is the person you are questioning, proceed to question F immediately. If the source is an informant, proceed to question F after completing the procedure on the addendum.
- F. What training have you had in investigating offenses of this type or in identifying this type of contraband?
- G. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?
- H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"(Applicant's name), I find that probable cause exists for the issuance of an authorization to search (*location or person*) for the following items: (*Description of items sought*) and I authorize (*Applicant's name*) to search (*location or person*) for those items and to seize them if found."

II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM

First inquiry. What forms the basis of his or her knowledge? You must find what **facts** (not conclusions) were given by the informant to indicate that the items sought will be in the place described.

Then you must find that **either** the informant is reliable or his information is reliable.

1. Questions to determine the informant's reliability:

- (a) How long has the applicant known the informant?
- (b) Has this informant provided information in the past?
- (c) Has the provided information always proven correct in the past?
Almost always? Never?
- (d) Has the informant ever provided any false or misleading information?
- (e) (If drug case) Has the informant ever identified drugs in the presence of the applicant?
- (f) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?
- (g) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of interior of locker room.)?

2. Questions to determine that the information provided is reliable:

- (a) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?
- (b) Do you possess information (e.g., personal knowledge) which indicates what the informant says is true?

III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK

Requirement of specificity: No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

A. Description of the place or the person to be searched.

1. **Persons.** Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.
2. **Places.** Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

B. **What can be seized?** Types of property and sample descriptions. The **basic rule:** Go from the general to the specific description.

1. **Contraband:** Something which is illegal to possess.

Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

2. **Unlawful weapons:** Weapons made illegal by some law or regulation.

Example: "Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades, and all component parts thereof."

3. **Fruits of crimes**

Example: "Household property, including, but not limited to, one G.E. clock, light blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

4. **Tools or instrumentalities of crime**. Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

5. **Evidence which may aid in a particular crime solution:**

Example: "Papers, documents, and effects which show dominion and control of said area, including, but not limited to, canceled mail, stenciled clothing, wallets, receipts."

MAXIMUM PUNISHMENT CHART

Punishment	SCM		SPCM		GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's
1. Death	NO	NO	NO	NO	YES (*1)	YES (1*)	YES (*1)
2. Dismissal	NO	NO	NO	NO	NO	NO	YES
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	NO
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO
5. Confinement	30 days	NO	12 mos.	NO	YES	YES	YES
6. Restriction	60 days	60 days	60 days	60 days	60 days	60 days	60 days
7. Hard Labor Without Confinement	45 days	NO	90 days	NO	3 mos.	NO	NO
8. Forfeiture of all Pay and Allowances	NO	NO	NO	NO	YES	YES	YES
9. Forfeiture of two-thirds pay per month	1 mo. (*2)	1 mo. (*2)	12 mos.	12 mos.	YES	YES	YES
10. Fine	YES (*3/*4)	YES (*3/*4)	YES (*3)	YES (*3)	YES	YES	YES
11. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO
12 Reduction to lowest paygrade	YES	NO	YES	NO	YES	NO	NO
13. Reprimand	YES	YES	YES	YES	YES	YES	YES

ALL PUNISHMENTS ARE LIMITED BY THE MAXIMUM ALLOWABLE FOR THE UCMJ ARTICLES VIOLATED AS WELL AS THE TYPE OF COURTMARTIAL THE CASE IS REFERRED TO.

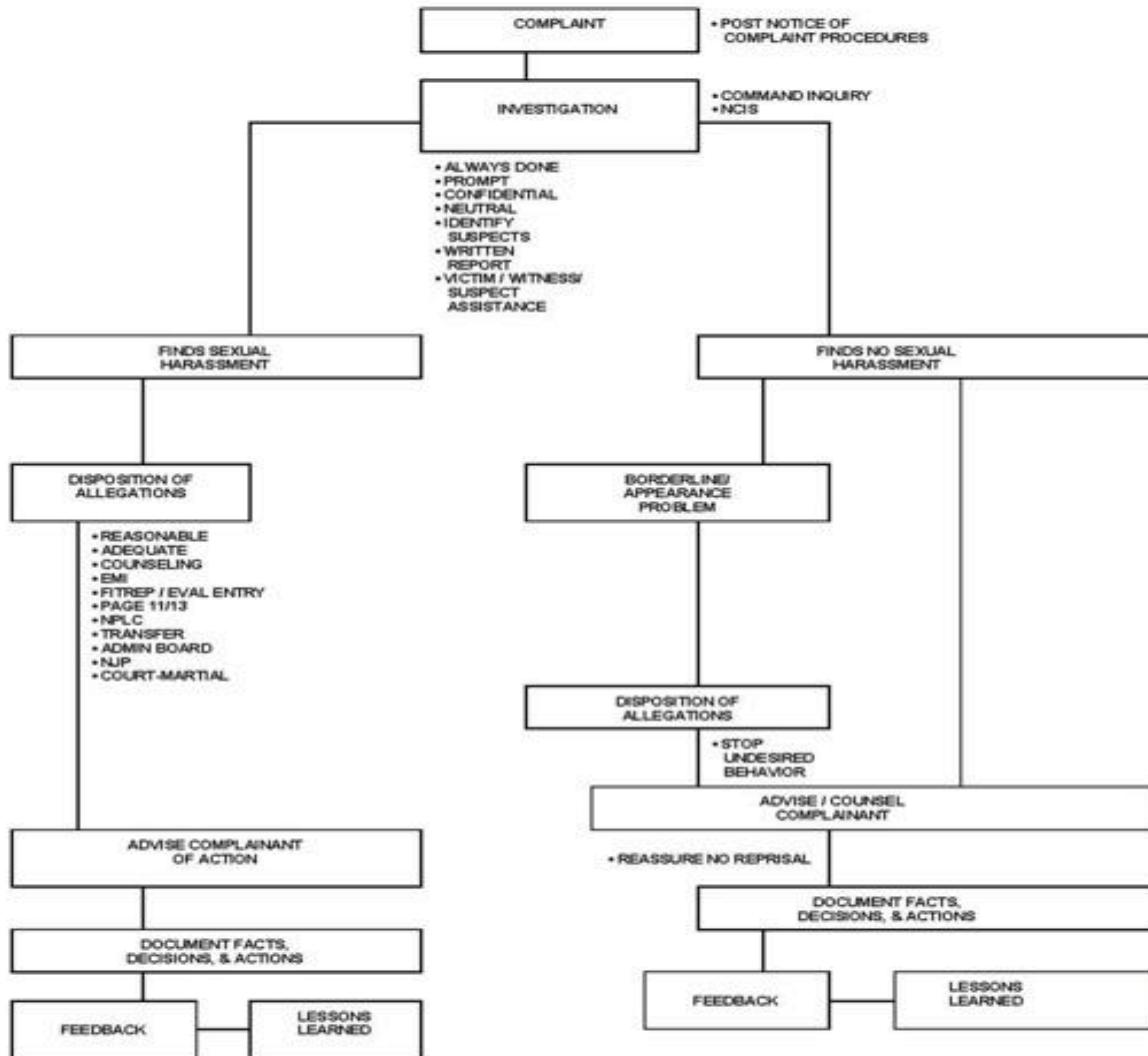
(*1) Where authorized or mandatory

(*2) May extend payment up to two months – MJM 10-F-2.e

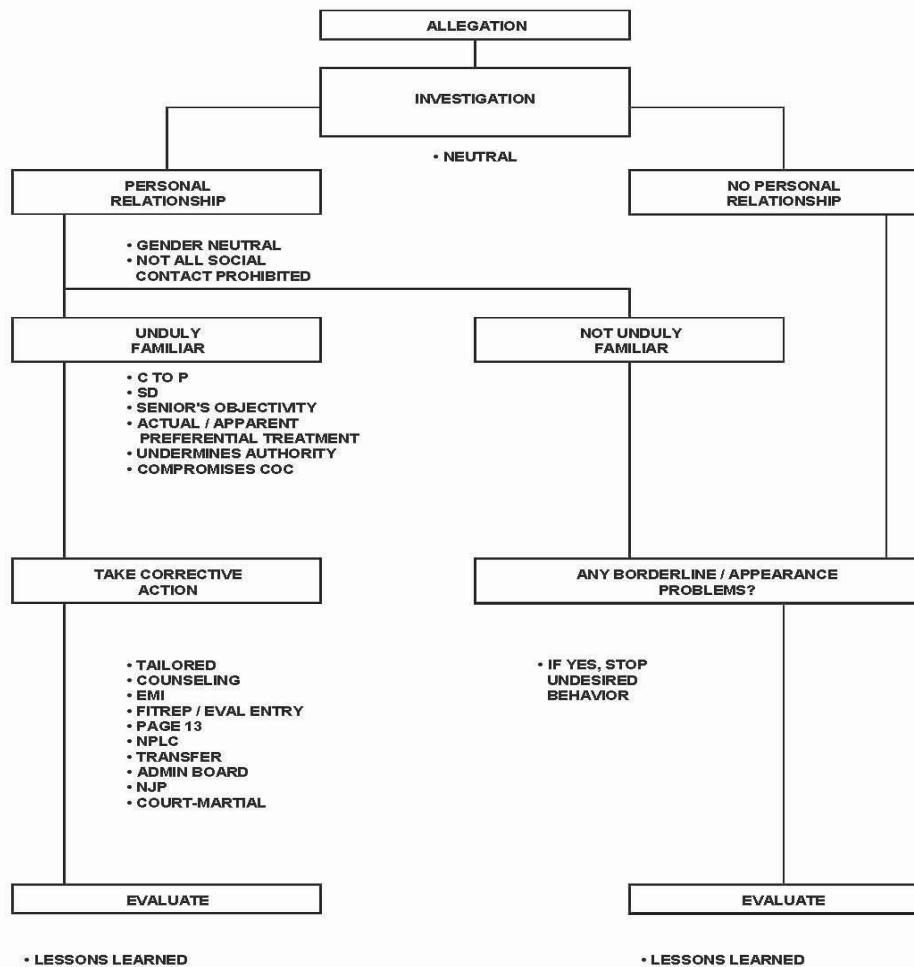
(*3) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case.

(*4) AT SCM, a fine may not be combined with forfeitures

STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



HANDLING FRATERNIZATION ALLEGATIONS



ARTICLE 138 REVIEW CHECKLIST

Case name: _____

All references are to the JAG Manual unless otherwise noted.

COMPLAINT

- Complaint is properly forwarded? (§ 0306d)*
 - Addressed to proper GCMA, via intermediate endorsers. If not, readdress and forward properly.
- Is respondent the proper respondent? (§ 0305b/NAVREGS 1150)**
 - If 138, respondent was complainant's CO at the time of the complained of actions. If not, process as 1150 or return under § 0307b (1), as appropriate.
 - If 1150 and respondent and complainant have the same commanding officer, then it is a "true 1150" and no report to SECNAV is required. All other 1150's are processed using 138 rules.
 - See § 0305c if one of the parties has transferred since the alleged wrong.
 - Is complainant a proper complainant? (§ 0305a) If not, see § 0307b (1).**
 - Complainant submitted written request for redress to respondent prior to submitting Art 138 complaint? (§ 0306b) If not, complaint may be returned to complainant in accordance with 0307b (2).*
 - Complaint is timely, or late submission justified? (§ 0306a) If not, complaint may be returned to complainant in accordance with §0307b (2).*
 - Complainant does not join more than one respondent? (§ 0306g) If it does, complaint may be returned to complainant in accordance with § 0307b (2).*
 - Complaint does not join more than one complainant? (§ 0306g) If it does, complaint may be returned to complainant in accordance with § 0307b (2).*
 - Complaint is in the proper format? (§ 0306c, Appendix A-3-a) If not, obtain information and include in GCMA's action or the complaintmay be returned to complainant in accordance with § 0307b (2).*
 - Includes complainant's and respondent's personal information?

Includes date wrong discovered and number of days between discovery of wrong and complaint submission?

Explains delay, if applicable?

Complaint complete with all enclosures/endorsements?

Certified complaint to be "true and correct" and is signed, witnessed, and dated?

Complaint alleges a wrong that is a proper subject of a complaint of wrongs? (§§ 0303f, 0304a)**

Not recommendations (unless controlling, e.g. advancement recommendations, NEC removal)?

Not general policies of DON?

Not wrongs that have another DON procedure that provides

notice, right to rebut or hearing, and review by superior; includes adseps, BOIs, NJP, courts-martial, DFC.

Complaint makes a proper request for relief? (§ 0305)**

* Defect may be waived by GCMA. ** Defect **may not** be waived by GCMA and requires finding that particular allegation is not cognizable.

NOTE: FOR THOSE DEFECTS THAT MAY BE WAIVED BY GCMA, FAILURE TO RETURN THE COMPLAINT TO COMPLAINANT AND/OR ADDRESSING COMPLAINT ON THE MERITS IS CONSIDERED A WAIVER OF THE DEFECTS.

GCMA ACTION

Advance copy provided to OJAG Code 13? (§ 0306d)

Complainant provided a copy of all endorsements and enclosures? (§ 0307e)

Complainant given opportunity to rebut adverse material using A-3-c? (§ 0307e)

If endorsements to complainant's rebuttal submissions contain new adverse matter(s), complainant must be given an opportunity to rebut that also.

Is this command the proper GCMA? (§ 0305c)

If area coordinator is acting as GCMA, written request from original GCMA must be included.

Has complaint been withdrawn by complainant? (§ 0306f)

Signed withdrawal letter forwarded to OJAG Code 13 with notice of withdrawal to SECNAV.

If complaint returned to complainant because it is incomplete or otherwise procedurally deficient, has complainant been provided with an explanation for return and copies forwarded to SECNAV via OJAG Code 13? (§ 0307b)

GCMA's action completed within 60 days of receiving complaint? (§ 0307f)

Report to SECNAV signed personally by GCMA or official "Acting" (not "by direction")? (§ 0307g)

If GCMA cannot effect redress granted, file forwarded to SECNAV via officer who may effectuate redress (e.g., CNP)? (§ 0307h)

Report to SECNAV in proper format, including complaint and all enclosures and endorsements? (§ 0307j) Report must discuss each allegation of wrong and conclude:

whether it is cognizable, and if it is cognizable

whether it is with merit or not, and if the allegation has merit

whether relief is appropriate.

Complainant advised in writing of action on complaint? (§ 0307k)

Note: this requirement may be satisfied by sending complainant copy of report to SECNAV.

For USMC commands, report to SECNAV sent via Commandant of the Marine Corps (JAR). (§ 0307j)

Delay must be explained in letter to SECNAV.

Signed by reviewing official

EXECUTIVE OFFICER'S INQUIRY (XOI)

1. Obtain the report chit, all written statements, and all physical and documentary evidence relating to the alleged offense from the legal officer. (You may want to consult with the legal officer prior to XOI).
2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or extenuating (E), mitigating (M), or aggravating (A) circumstances concerning the alleged offense.
3. Inform the accused that the CO is contemplating the imposition of NJP and that this informal hearing -- the XOI -- is part of the NJP process. The accused may not refuse XOI.
4. Describe the specific offense(s) to the accused, including the article of the UCMJ that was allegedly violated.
5. If applicable, advise the accused of the right to refuse NJP. (Accused can never refuse XOI.)
6. Advise the accused (s)he does not have to make a statement regarding the offense(s) and that any statement made by him / her can be used as evidence against him / her at XOI and NJP.

Note: If it is reasonably foreseeable that the accused's statements during the XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver—in the format of appendix A-1-m of the *JAG Manual*—will have to be obtained from the accused during the hearing, before proceeding further.

7. Ask the accused what happened.
 - If (s) he admits guilt, the accused should be allowed to articulate any E & M.
 - Ask the witnesses to testify on matters of E & M or A.
 - If (s) he denies guilt, the accused should be asked for his/her version of the facts.
 - Ask the witnesses to testify about the alleged offense.
 - Inform the accused of any other evidence against him/her concerning the alleged offense (i.e. written statements and/or physical and documentary evidence).
 - Allow for rebuttal, as appropriate.
 - Ask the witnesses to testify on matters of Extenuation, Mitigation and Aggravation.
8. Ask the accused if (s) he would like to make a final statement.
9. If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) You may also impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report chit and return all materials to the legal officer who will take appropriate action.

**USE OF DRUG URINALYSIS RESULTS
FROM DOD CERTIFIED DRUG LABS***

	Usable in disciplinary proceedings	Usable as basis for separation	Usable for characterization of service
1. Search or Seizure - member's consent - probable cause	YES YES	YES YES	YES YES
2. Inspection - random sample - unit sweep	YES YES	YES YES	YES YES
3. Medical - general diagnostic purposes	YES*	YES	YES*
4. Fitness for duty - command-directed - competence for duty - mishap/safety Investigation	NO NO NO	YES YES YES	NO NO NO
5. Service directed - treatment facility staff (military) - alcohol rehab testing - Naval briggs - entrance testing - accession training pipeline	YES NO YES NO YES	YES YES YES YES YES	YES NO YES NO** YES

* All urine samples must be confirmed positive at a DoD certified lab by GC/MS

** YES for reservists recalled to active duty (except DEP participants)

OPNAVINST 5350.4D

MILPERSMAN 1910-704

DETERMINING SEPARATION AUTHORITY

Responsible Office	NAVPERSCOM (PERS-832)	Phone:	DSN COM FAX	882-4433 (901) 874-4433 882-2624
NAVPERSCOM CUSTOMER SERVICE CENTER		Phone:	Toll Free	1-866-U ASK NPC

References	(a) 10 U.S.C. 12686
-------------------	---------------------

1. **Separation Authority (SA)**. Use this table to determine SA.
(NOTE: COG refers to Convenience of the Government.)
Exceptions to these rules are noted in the "rule" section that follows.

NOTE: Commands are advised that lowest SA should be used whenever practicable to reduce processing time and expenditure of Government funds.

IF member is being separated by reason of...	THEN separation authority is...
<ul style="list-style-type: none">Selected changes in service obligation - Inactive ReservesSelected changes in service obligations - immediate reenlistmentSelected changes in service obligations - within 90 days of expiration of active obligated service (EAOS)Expiration of service obligation	Commanding Officer (CO)

IF member is being separated by reason of...	THEN separation authority is...
<ul style="list-style-type: none">• COG - dependency or hardship• COG - pregnancy or childbirth• COG - surviving family member• COG - reservist becomes a minister• COG - other designated physical or mental conditions• COG - personality disorder• COG - parenthood (if less than 1 year obligated service and not in critical rating)• COG - review action• COG - early release to further education• Entry level performance and conduct• Unsatisfactory performance• Drug abuse rehabilitation failure• Alcohol abuse rehabilitation failure• Family Advocacy Program Rehabilitation Failure (Best Interest of the Service (BIOTS) cases to Secretary of the Navy (SECNAV))• Defective Enlistments and Inductions - erroneous• Defective Enlistments and Inductions - minority• Defective Enlistments and Inductions - defective enlistment agreements• Defective Enlistments and Inductions - separation from delayed entry program• Physical Fitness Assessment (PFA) Failure	Special Court-Martial Convening Authority (SPCMCA) or higher

IF member is being separated by reason of...	THEN separation authority is...
<ul style="list-style-type: none">• Misconduct - a pattern of misconduct• Misconduct - commission of a serious offense• Misconduct - civilian conviction• Misconduct - drug abuse• Defective Enlistments and Inductions - fraudulent entry into naval service• Unsatisfactory participation in Ready Reserve	<p>General Court-Martial Convening Authority (GCMCA) or higher when administrative board procedure was used and</p> <ul style="list-style-type: none">• Board recommended OTH• Board recommended retention• Member waived a board• Member requested a conditional waiver if applicable <p>SPCMCA or higher when</p> <ul style="list-style-type: none">• notification procedure was used• administrative board procedure was used and board recommended separation with Honorable, General or Entry Level Separation

IF member is being separated by reason of...	THEN separation authority is...
• Separation in lieu of trial by court-martial	GCMCA unless request is based solely on an absence without leave of more than 30 days, then SPCMCA is SA.
<ul style="list-style-type: none">• Selected Changes in Service Obligations - general demobilization or reduction in authorized strength• Selected Changes in Service Obligations - acceptance of active duty commission or appointment• COG - Conscientious Objection• COG - Being an Alien• When member has Physical Evaluation Board (PEB) action completed or pending, and at same time being administratively processed for separation	Commander, Navy Personnel Command (COMNAVPERSCOM)
<ul style="list-style-type: none">• Disability• BIOTS	Secretary of the Navy (SECNAV)

2. **Rules:**

a. **COMNAVPERSCOM is SA** when a member is processed for a mandatory reason and a recommendation for retention or suspended separation is made and the SA above supports the recommendation.

b. **Chief of Naval Personnel (CHNAVPER) or SECNAV is SA:**

(1) When an administrative board finds that a preponderance of the evidence supports one or more of the reasons for separation and recommends retention, but the SA above recommends separation. (SECNAV)

(2) For involuntary separation of active duty members with 18 or more years total active military service.
(CHNAVPERs)

(3) When the GCMCA recommends disapproval of a conscientious objector case. (CHNAVPERs)

(4) For involuntary separation of active duty reservists within 2 years of retired or retainer pay (reference (a) refers). (SECNAV)

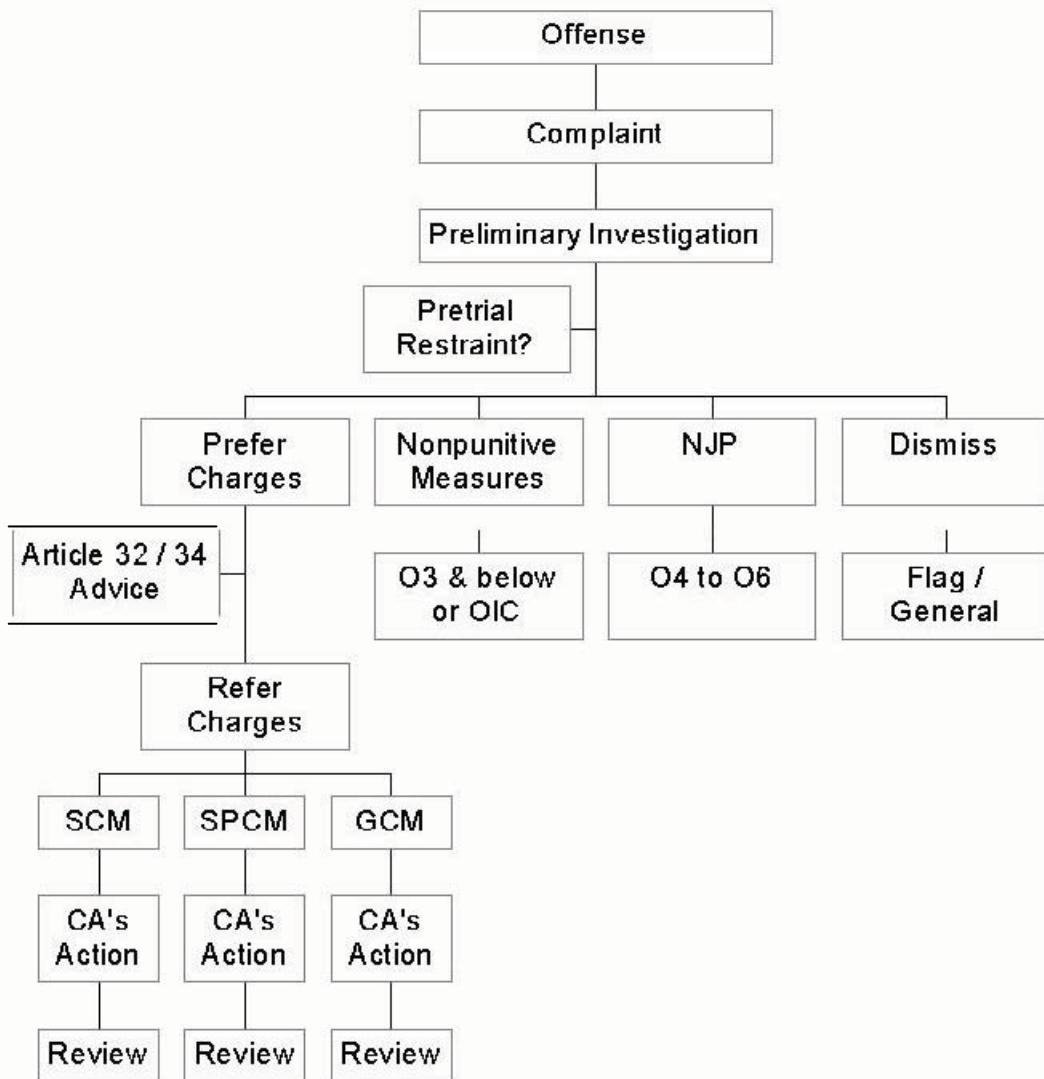
(5) When the sole basis for separation is a serious offense that resulted in a conviction by a special or general court-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is recommended by an administrative board (or CO when no board was held). (SECNAV)

(6) The SA above determines that an Honorable Discharge is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty for a member in an entry level status who is being separated by reason of Selected Changes in Service Obligations, Convenience of the Government, Disability, or Best Interest of the Service.
(SECNAV)

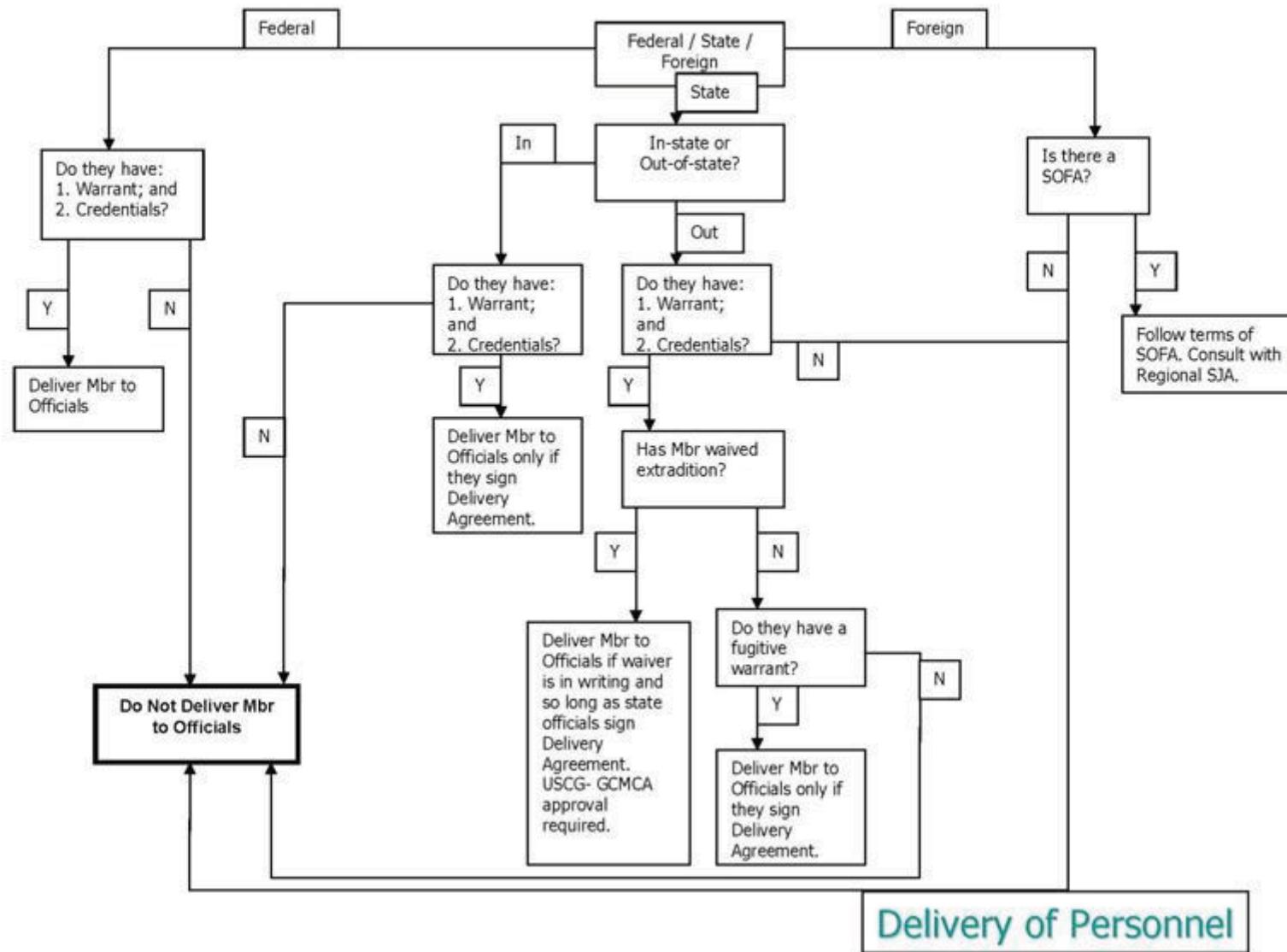
(7) When a member is processed for misconduct - civilian conviction and final action on the appeal has not been taken, and the member does not request separation before final action on the appeal is taken. (SECNAV)

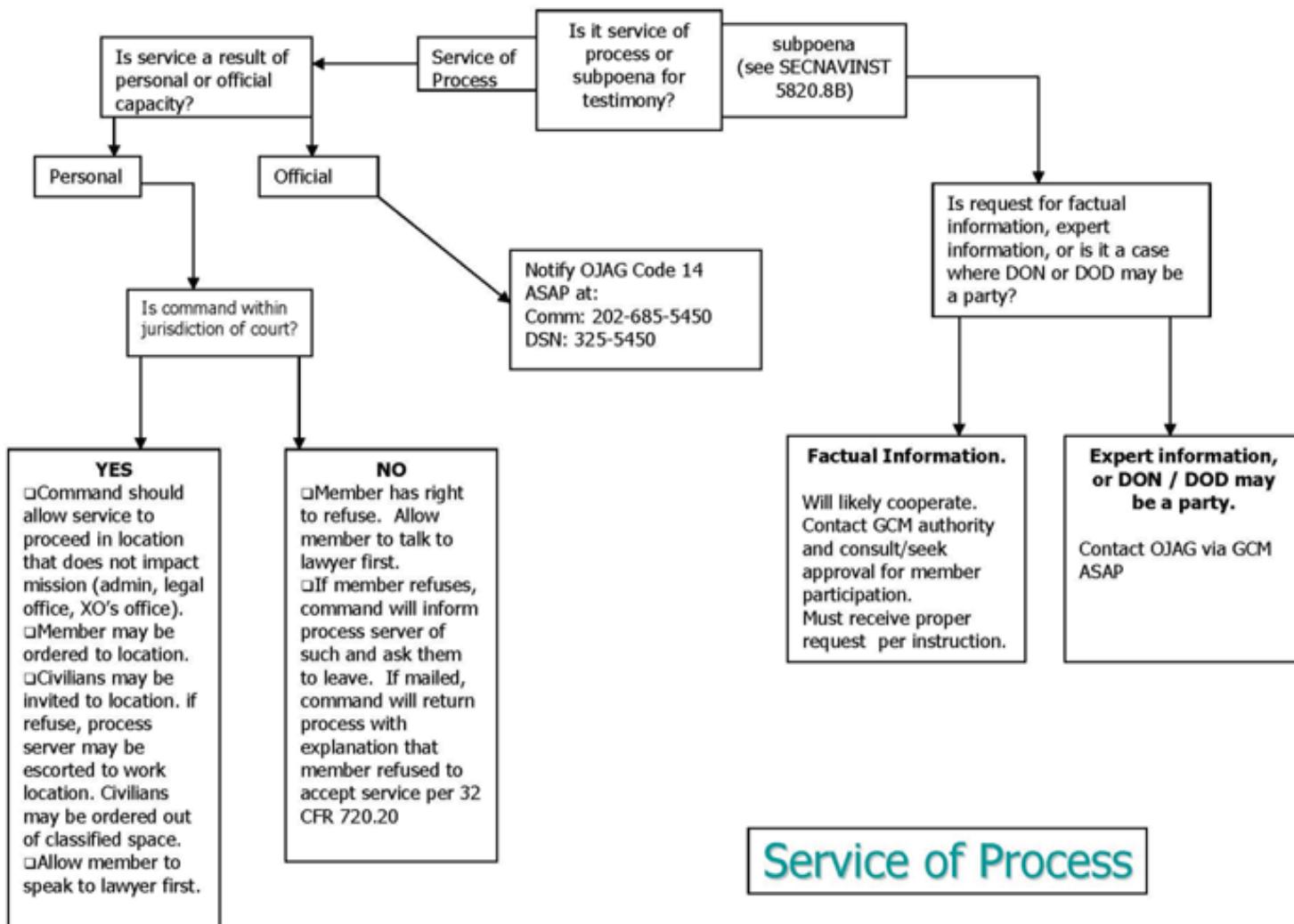
NOTE: Review individual reason processing articles to determine correct NAVPERSCOM code where administrative separation should be mailed.

OVERVIEW OF MILITARY JUSTICE SYSTEM



RELATIONS WITH CIVIL AUTHORITIES FLOW CHART





LOCAL DIRECTORY

(Write in name and phone number of personnel in your local area)

Naval Legal Service Office (NLSO) / Trial Service Office (TSO):

-CO / OIC:

-Command Service Officer: (Assist all commands without permanent Staff Judge Advocates assigned)

-Trial Counsel: (Represents government (Prosecution) in courts-Martial)

-Defense Counsel: (Represents members under investigation or facing disciplinary action)

-Legal Assistance Attorney: (Assists members and dependents with personal legal matters i.e. wills)

Local Staff Judge Advocate:

(Area coordinator & Flag JAGS are ethics advisors)

ISIC JAG or first JAG in chain of command:**Others:****CAAC:**

(Assist area commands with Alcohol / Drug incidents)

Equal Opportunity Officers:

(Assist with discrimination complaints / sexual harassment / fraternization)

Family Advocacy Representative (FAR):

(Assist area commands with domestic violence and child abuse incidents)

Naval Criminal Investigative Service:

-Senior Agent In Charge (SAC): -Special Agent: